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# MISSISSIPPI

# ADVANCE SHEETS

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2012 Legislative Session  
General Laws



LexisNexis





# **MISSISSIPPI GENERAL LAWS ADVANCE SHEETS 2012**

Regular Session

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## PREFACE

### **Contents; publication schedule.**

The 2012 Advance Sheets of the General Laws of Mississippi are part of the supplementation service for your official *Mississippi Code of 1972 Annotated*, and consist of a series of pamphlets issued during the 2012 Legislative Session of the State of Mississippi. The purpose of this service is to provide you with the most timely legislative information possible, and to make the most recent changes to the *Mississippi Code* available to you in an easy-to-use format.

The Advance Sheets contain all public acts enacted by the Legislature and approved by the Governor during the 2012 Regular Session. This pamphlet, the second in the series, contains the second 101 general bills signed by the Governor. The third pamphlet will contain the remainder of the acts from the 2012 Regular Session. Appropriation bills and private and local bills are not included in the Advance Sheets.

The acts are arranged in order by House Bill and Senate Bill number, with House Bills appearing first. The final pamphlet will contain a cumulative table of House Bills and Senate Bills and their corresponding chapter numbers.

### **Summary of acts; tables; index.**

To assist you in locating pertinent legislation, the Advance Sheets include several tables and other features prepared by the editorial staff of the publisher. Included in this Pamphlet 2 are the following:

- a **Summary of Acts** summarizing the subject of each act in the pamphlet;
- **Cumulative Legislative Summaries** giving brief descriptions of important legislation;
- a **Cumulative Table of Code Sections Affected** showing the impact of legislation on sections of the *Code*;
- a comprehensive, cumulative **Index**, with headings based on the headings that are used in the general index to the *Code*.

In addition, the following tables will be added to the final pamphlet:

- a **Cumulative Allocation of Acts Table** showing each general law and its effect on the section of the *Code*;
- **Cumulative Tables of House Bills and Senate Bills** and their corresponding chapter numbers.

As an added research feature, we have included an individual **Act Summary** preceding each General Law. This summary contains (1) a description of the act, (2) the legislative history of the act, (3) background information, such as the effective date and disposition of the act, (4) the House and Senate committees to which the act was referred, (5) the principal author of the act, and (6) a list of the *Code* sections affected by the act. To better utilize these act summaries, you should be familiar with the following abbreviations and their meanings:

## PREFACE

- Under the heading “Background Information”  
“VRA” = Voting Rights Act  
“App. Req.” = Approval Required
- Under the heading “Code Sections”  
“A” = Amended  
“R” = Reenacted  
“RA” = Reenacted and Amended  
“RP” = Repealed  
“BF” = Brought Forward

### **Treatment of acts in the Advance Sheets.**

The most recent General Laws are printed herein exactly as passed. No corrections or other editorial changes have been made.

The Legislature has indicated changes to *Code* materials by using the following symbols:

- Single underscoring of material appearing in an act indicates text that will appear as newly added language in the *Mississippi Code*. For an entirely new section, the section number will be underscored. Double underscoring in the text of an act reflects an amendment to the language of the original bill.
- Triple asterisks (\*\*\*) appearing in an act indicate the deletion of text from a section of the *Mississippi Code*. Where asterisks appear on a line by themselves, the deletion of one or more paragraphs is indicated.

### **Treatment of acts in *Mississippi Code of 1972 Annotated*.**

It is IMPORTANT to note that the treatment of some legislation, when it later appears in the *Mississippi Code of 1972 Annotated*, may be subject to change for various reasons. For example:

- Certain sections of the acts printed in this Advance Sheet were not assigned *Code* section numbers; in these instances, the publisher’s staff of legal analysts will suggest *Code* section designations, and these recommendations will be sent to the Joint Legislative Committee on Compilation, Revision and Publication of Legislation for approval;
- *Code* section number assignments might be changed, pursuant to the authority of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, because of conflicts with previously existing section numbers or because of other refinements made during the editorial process; or
- Text of sections might be changed, also pursuant to the authority of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, because of conflicts with other approved legislation from the 2012 Legislative Session.

Any such changes will be reflected in the 2012 *Mississippi Code of 1972 Annotated* supplements and replacement volumes.

## PREFACE

### **Information, suggestions, comments, and questions.**

Visit the LexisNexis website at <http://www.lexisnexis.com> to find an online bookstore, technical support, customer service, and other company information.

Suggestions, comments, or questions about the *Mississippi Code* or the Advance Sheets are always welcome. You may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at [customer.support@bender.com](mailto:customer.support@bender.com), or writing to *Mississippi Code* Editor, Matthew Bender & Co., Inc., 701 E Water St., Charlottesville, Virginia 22902-5389.

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## SUMMARY OF ACTS

### Summary of Acts

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## LEGISLATIVE SUMMARIES

of important legislation enacted during

### **2012 Legislative Session of the State of Mississippi**

#### **ABORTION**

Act requires that physicians performing abortions in abortion facilities be board certified in obstetrics and gynecology and have admitting privileges at a local hospital. **HB 1390**

#### **ADMINISTRATIVE PROCEDURE**

Act creates the small business regulatory flexibility act to provide for more flexibility in rulemaking for small businesses. **SB 2398**

#### **AGRITOURISM**

Act is enacted to provide for limited liability for persons engaged in agritourism activities. **SB 2439**

#### **AIR POLLUTION**

Act removes the maximum annual fee limitation for air operating permits under Title V of the Federal Clean Air Act. **SB 2812**

#### **AIRPORTS AND AIRCRAFT**

Act creates a lien on aircraft landing at an airport of an airport authority for the full amount of landing fees or other rates and charges. **SB 2336**

Act extends the repealer regarding an income tax credit for use of airport and port facilities. **SB 2613**

Act authorizes certain powers and duties, joint or mutual aid agreements, and lease of oil, gas or mineral interests by airport authorities. **SB 2885**

#### **ALCOHOLIC BEVERAGES**

Act prohibits beer or light wine permittees to accept certain coupons as full or partial payment. **HB 1250**

Act provides for the sale of alcohol in municipalities voting to come out from under the dry laws. **SB 2497**

## LEGISLATIVE SUMMARIES

Act expands the definition of a restaurant to include buildings in certain historic districts. **SB 2607**

Act revises the alcoholic content of beer and provides for regulation of light wine along with beer. **SB 2878**

### **ANATOMICAL GIFTS**

Act enacts the revised Mississippi uniform anatomical gift act (UAGA). **SB 2685**

### **ART THERAPISTS**

Act sets out the duties of the state board of health in relation to credentialing of art therapists. **SB 2526**

### **BABY DROP-OFF LAW**

Act protects the anonymity of parents seeking relief under the law. **SB 2479**

### **BAIL AND RECOGNIZANCE**

Act allows for contracting with soliciting and enforcement agents to manage the affairs of a deceased agent who had been acting as a personal surety agent. **HB 631**

Act provides for relicensing of a soliciting or enforcement bail agent after cessation of employment with a professional bail agent. **HB 631**

### **BANKS AND FINANCIAL INSTITUTIONS**

Act creates a self-assessment privilege, where such reports are not admissible as evidence or subject to discovery and not considered public records. **HB 1460**

### **BEEES**

Act provides for administrative proceedings in case of a violation of provisions regulating bees and bee diseases. **HB 634**

### **BLIND AND VISUALLY IMPAIRED PERSONS**

Act amends the requirements for educational services to blind and visually impaired students. **HB 960**

### **BOLL WEEVILS**

Act extends the repealer on the annual audit of the boll weevil management corporation trust fund. **SB 2316**



## LEGISLATIVE SUMMARIES

### **BUILDERS AND REMODELERS**

Act provides for exemptions from the residential builders and remodelers act and sets out the requirements for carrying liability insurance. **SB 2533**

### **BUILDING CODES**

Act provides that exceptions to local building code enforcement do not apply to flood plain management ordinances or regulations. **HB 773**

Act requires the building code council to submit a report with recommendations for a statewide mandatory building code. **SB 2651**

### **BUSINESS ENTITIES**

Act generally amends the provisions regarding various business entities. **HB 789**

Act enacts the Mississippi registered agents act. **HB 1162**

Act provides for the tax treatment when a controlled corporation distributes stock and securities. **HB 1519**

### **BUSINESS IMPROVEMENT DISTRICTS**

Act extends the reauthorization period and the number of participating property owners necessary to adopt a reauthorization. **HB 968**

### **CAPITOL BUILDING AND GROUNDS**

Act provides for the appointment of the capitol building curator by the department of archives and history. **HB 269**

### **CELL PHONES**

Act sets out requirements for sellers of portable electronics insurance. **HB 894**

### **CHANCERY COURTS**

Act provides for judicial salaries and deposits into judicial system operation fund and other funds to provide funding for judicial salaries. **HB 484**

### **CHURCHES**

Act creates a sales and use tax exemption for the sale of utilities to churches. **HB 582**

### **CIRCUIT COURT**

Act sets forth the clerk's fee for docketing and filing of a notice of renewal of judgment in circuit courts. **HB 361**

## LEGISLATIVE SUMMARIES

Act provides for judicial salaries and deposits into judicial system operation fund and other funds to provide funding for judicial salaries. **HB 484**

### COLLEGES AND UNIVERSITIES

Act provides that repayment of awards by critical needs teacher scholarship program participants are to be deposited in the consolidated revolving loan fund. **HB 860**

Act authorizes the department of finance and administration to sell and convey state-owned property under the control of the University of Southern Mississippi Gulf Coast. **HB 866**

Act revises the scope of authority for the commission on college accreditation. **HB 1086**

Act allows for waiver of out-of-state tuition according to the discretion of the board of trustees of state institutions of higher learning. **HB 1095**

Act revises the use of bond proceeds allocated to Mississippi State university. **HB 1245**

Act authorizes the University of Southern Mississippi to borrow funds to operate registered nurse anesthetist programs at the Hattiesburg campus. **SB 2572**

### CONCEALED WEAPONS LICENSES

Act revises the conditions for entry into reciprocal agreements with other states. **HB 695**

### CONTRACTORS

Act provides that a subcontractor providing work and materials is authorized to receive a copy of the general contractor's surety bond. **HB 1301**

### CORRECTIONS DEPARTMENT

Act clarifies that a person committed to an penal institution is committed to the department of corrections, not the institution. **HB 369**

Act creates the community service revolving fund, sets out which funds receive deposits and extends the repealer date. **HB 422**

## LEGISLATIVE SUMMARIES

Act requires a PEER committee to submit inmate cost per day report and to develop a current cost-based model, prior to entering into private correctional services contracts. **HB 440**

Act extends the repealer regarding the Bolivar county regional facility alcohol and drug treatment program. **HB 454**

Act establishes a youthful offender unit (YOU) at the Central Mississippi correctional facility. **HB 523**

Act removes the requirement that offenders housed at the Walnut Grove correctional facility be under the age of 22. **HB 523**

Act increases the threshold amount for contracts requiring approval by the public procurement review board. **HB 525**

Act requires the department to maintain an offender's cover sheet with requests for offender records, also known as "pen-pack." **SB 2486**

### COUNTERFEITING

Act clarifies the offense of selling or vending counterfeit goods. **SB 2549**

### COUNTIES

Act authorizes a county board of supervisors to enter into development agreements regarding master planned communities. **HB 263**

Act authorizes a county to adopt orders, resolutions or ordinances that apply to a clearly defined geographic area. **HB 515**

Act authorizes counties and municipalities to donate funds to support of farmers' markets. **HB 535**

Act revises the procedures regarding cleaning of private property determined to be a menace to public health and safety, providing for a notice of hearing and imposing a penalty on the owner. **HB 545**

Act revises the procedures for changing the boundaries of supervisor districts. **HB 585**

Act extends the repealer date for the forest acreage tax. **HB 747**

Act prohibits certain conflicts of interest in the process for selecting a bank as a depository for county funds. **HB 966**

## LEGISLATIVE SUMMARIES

Act increases the minimum purchase cost requiring a requisition or purchase order for the county central purchase system. **HB 998**

Act permits county or municipality to enter into agreements with economic development projects for the provision of certain utilities. **HB 1255**

Act repeals the preapproval requirement for counties or municipalities desiring to acquire or create a geographic information system. **HB 1407**

Act regulates the acres of land that a county board of supervisors may acquire for a highway workstation. **SB 2349**

Act clarifies the publications in which localities must advertise for the promotion of tourism. **SB 2355**

Act authorizes the investment of surplus finds in interest-bearing accounts. **SB 2567**

Act revises the procedures for calling an emergency meeting of the board of supervisors. **SB 2884**

### COURT OF APPEALS

Act provides for judicial salaries and deposits into judicial system operation fund and other funds to provide funding for judicial salaries. **HB 484**

### DENTISTS

Act removes the repealer on provision relating to contracts between health care entities and dentists relating to dental care benefits. **SB 2324**

### DOGS

Act removes the automatic repealer from the provision prohibiting fighting among dogs or hogs. **SB 2504**

### DOMESTIC VIOLENCE

Act makes technical corrections to the address confidentiality program. **HB 159**

Act clarifies the provisions regarding domestic abuse protection orders. **HB 780**



## LEGISLATIVE SUMMARIES

### DRIVERS' LICENSES

Act provides that photograph fees be used to defray the cost of future technology initiatives. **HB 1235**

Act authorizes contributions to the litter prevention fund from driver license applicants. **SB 2109**

### DRIVING UNDER THE INFLUENCE

Act creates a separate offense of endangering a child by driving under the influence. **HB 681**

### DRUGS AND CONTROLLED SUBSTANCES

Act provides that a drug task force may collect drugs brought to the task force and transport them to the Bureau of Narcotics incinerator for disposal. **HB 423**

Act revises Schedule I of the controlled substances law. **HB 730**

Act revises the prohibited acts constituting unlawful obtaining or possession of controlled substances or legend drugs. **HB 1355**

Act prohibits the false representation of anything as a controlled substance. **SB 2186**

### ELECTIONS

Act requires a petition for judicial review of an election involving the decision of an executive committee to be filed in circuit court. **HB 993**

Act sets out the manner in which the supreme court is to make judges available to hear election day contests or disputes. **HB 994**

Act requires that absentee ballots and applications be processed through the statewide election management system. **HB 995**

Act clarifies the definition of absent voter, provides for electronic signatures on absentee ballots, and revises the deadline for received of an absentee ballot by the registrar. **SB 2552**

Act creates a task force to study the election laws. **SB 2772**

### ELECTRONIC TRANSACTIONS

Act revises the definition of "written" for purposes of the uniform electronic transactions act. **SB 2855**

## LEGISLATIVE SUMMARIES

### EMERGENCIES OR DISASTERS

Act provides for a premium discount or rate reduction for building or retrofitting property to resist damage from hurricane or windstorm events. **HB 1410**

Act revises the procedures for calling an emergency meeting of the board of supervisors. **SB 2884**

### EMERGENCY VEHICLES

Act revises the definition of authorized emergency vehicle. **SB 2283**

### ENGINEERS

Act provides that the engineers licensing law is not applicable to activities relating to litigation. **SB 2474**

### FAIRS

Act authorizes the Mississippi fair commission to contract with entities for use of the state fairgrounds. **SB 2912**

### FARMERS' MARKETS

Act authorizes counties and municipalities to donate funds to support of farmers' markets. **HB 535**

### FIDUCIARIES

Act enacts the principal and income act of 2013 to replace the revised uniform principal and income law. **HB 732**

Act enacts the uniform prudent management of institutional funds act. **HB 1104**

### FINANCE AND ADMINISTRATION DEPARTMENT

Act authorizes the department to sell and convey state-owned property under the control of the University of Southern Mississippi Gulf Coast. **HB 866**

Act removes the requirement that invoices for sales of goods and services to the state must be filed with the agency incurring the obligation. **HB 885**

Act authorizes the department to donate or convey property to Meridian community college, on behalf of department of public safety. **HB 895**

Act provides that the surplus lines premium tax does not apply to property risk written by the department on behalf of the state. **HB 1348**

## LEGISLATIVE SUMMARIES

### FIREARMS AND OTHER WEAPONS

Act creates the criminal offense of knowingly deceiving a licensed firearms dealer regarding firearm purchases. **HB 353**

Act repeals the requirement that dealers keep records of weapons sold. **HB 455**

Act revises the conditions for entry into reciprocal agreements with other states for concealed weapons licenses. **HB 695**

### FIRES AND FIRE PREVENTION

Act authorizes the appointment of a state chief assistant deputy fire marshal. **HB 726**

Act authorizes mutual aid compacts for fire service agencies. **HB 1418**

### FISH AND WILDLIFE

Act revises the restrictions on commercial harvesting of oysters, by adding an exception for certain reefs approved by the commission. **HB 368**

Act extends the repeal date for certain provisions regarding the regulatory authority of the commission and department of wildlife, fisheries and parks. **HB 756**

Act revises the state assent to certain federal provisions, and provides that revenue from license sales will be under the exclusive control of the fish and wildlife agency. **HB 848**

Act clarifies the provisions regarding hunting on public roads while in possession of a loaded weapon and clarifies the definition of “unloaded weapon.” **HB 1326**

Act allows the commission on marine resources to open shrimping areas in case of a disaster adversely affecting the shrimp fishery. **SB 2295**

Act extends the authority of the commission and department of wildlife, fisheries and parks to regulate hunting in noncommercial wildlife enclosures. **SB 2325**

Act provides for the penalty for violations regarding hunting deer in noncommercial wildlife enclosures. **SB 2325**

## LEGISLATIVE SUMMARIES

### FLOOD CONTROL

Act provides that exceptions to local building code enforcement do not apply to flood plain management ordinances or regulations. **HB 773**

### FOREST ACREAGE TAX

Act extends the repealer date. **HB 747**

### FREE PORT WAREHOUSES

Act extends the definition of free port warehouse to include facilities for the temporary storage and handling of property pending transit out of state, for the purpose of providing eligibility for a property tax exemption of such property. **SB 2342**

### FUNERAL SERVICES

Act extends the repealer date on sections relating to the state board of funeral services. **SB 2339**

Act provides for the regulation of funeral establishments, crematories, mortuary service establishments, and a funeral service training and apprenticeship program. **SB 2339**

Act, in relation to preneed cemetery and funeral contracts, defines and imposes certain requirements on substitute providers, restricts loan recipients from trust funds, and provides that preneed contracts are portable. **SB 2579**

### HARBORS AND PORTS

Act extends the repealer regarding an income tax credit for use of airport and port facilities. **SB 2613**

### HEALTH INSURANCE

Act to be known as children's health insurance program act, transfers administration of program to division of Medicaid and establishes eligibility standards for receipt of benefits. **HB 316**

Act provides for the frequency of examination of insurers, including health maintenance organizations. **HB 434**

Act extends the repealer on the requirement for state contributions toward the cost of the state employees health insurance plan. **HB 703**

Act allows the commissioner of insurance to appoint a designee as a member of the state and school employees health insurance management board. **HB 768**



## LEGISLATIVE SUMMARIES

Act removes the requirement that the state and school employees health insurance management board employ a deputy state insurance administrator. **HB 997**

Act removes the repealer on the provision relating to contracts between health care entities and dentists relating to dental care benefits. **SB 2324**

Act enlarges the board of directors of the comprehensive health insurance risk pool association by two additional members. **SB 2586**

### HIGHWAYS

Act regulates the acres of land that a county board of supervisors may acquire for a highway workstation. **SB 2349**

### HOGS

Act removes the automatic repealer from the provision prohibiting fighting among dogs or hogs. **SB 2504**

### HUMAN SERVICES DEPARTMENT

Act establishes the division of community services within the department and extends the repeal date on certain provisions regarding the department. **HB 833**

### IMPLIED CONSENT LAW

Act authorizes electronic filing of citations for violations of the implied consent law. **SB 2802**

### INCOME TAXES

Ac authorizes public entities to create public benefit corporations in order to engage in new markets tax credit transactions. **HB 1257**

Act revises the time within which a qualified community development entity must issue a qualified equity investment in order to claim tax credit. **HB 1257**

Act provides for the tax treatment when a controlled corporation distributes stock and securities. **HB 1519**

Act authorizes the commissioner of revenue to establish free online income tax preparation and filing services. **SB 2605**

Act extends the repealer regarding an income tax credit for employers providing basic skills training. **SB 2609**

## LEGISLATIVE SUMMARIES

Act extends the repealer regarding an income tax credit for use of airport and port facilities. **SB 2613**

Act extends the repealer regarding an income tax credit for upholstered furniture manufacturing facilities. **SB 2656**

### INDECENT EXPOSURE

Act provides for a separate penalty for second and subsequent offenses. **HB 681**

### INSURANCE ADJUSTERS

Act provides the definition of “automated claims adjudication system,” clarifies the definition of “adjuster,” and prohibits denial of reciprocal license on basis of non-citizenship. **SB 2618**

### INSURANCE COMPANIES AND PRODUCERS

Act provides for the frequency of examinations of insurers. **HB 434**

Act sets out requirements for sellers of portable electronics insurance. **HB 894**

### INSURANCE DEPARTMENT

Act extends the repeal date for the comprehensive hurricane damage mitigation program within the department of insurance. **SB 2578**

### JUDGES AND JUSTICES

Act provides for judicial salaries and deposits into judicial system operation fund and other funds to provide funding for judicial salaries. **HB 484**

### JUVENILE PROCEEDINGS

Act establishes the Tony Gobar individualized assessment and comprehensive community intervention initiative (IACCII) program for certain youth. **HB 710**

Act allows for the youth court intake unit to recommend referrals to the youth court drug court. **SB 2256**

### LEGISLATURE

Act requires a fiscal note to be published on legislative website for bills and concurrent resolutions involving spending or effect on state revenue. **SB 2561**

## LEGISLATIVE SUMMARIES

### LIMITED LIABILITY COMPANIES

Act extends the repealer on the provision regarding fees. **HB 416; SB 2858**

### LITTER

Act authorizes contributions to the litter prevention fund from driver license applicants. **SB 2109**

### LIVESTOCK

Act extends the repealer on the provision setting out the number of livestock shows or sales to be held free of charge at livestock facilities. **HB 411**

### MARRIAGE

Act revises the criteria under which a person may marry and apply for a marriage license. **SB 2851**

### MEDICAID

Act authorizes the division of Medicaid to operate a data match system with financial institutions to verify assets of applicants and recipients. **HB 1391**

### MILITARY

Act authorizes a municipal public body to establish a quorum by allowing videoconferencing of military personnel. **HB 448**

Act provides an exemption from ad valorem taxes on motor vehicles. **HB 750**

Act authorizes the Mississippi military family relief fund to make grants to families experiencing hardship when a military family member is deployed. **SB 2010**

### MISSISSIPPI BURN FOUNDATION

Act authorizes a county property tax levy to support construction and operation of the Burn Center Lodge. **HB 544**

### MISSISSIPPI DEVELOPMENT AUTHORITY

Act creates the emerging crops fund. **HB 633**

### MISSISSIPPI MAJOR ECONOMIC IMPACT AUTHORITY

Act authorizes the conveyance of property by the authority for purposes of economic development. **HB 1266**

## LEGISLATIVE SUMMARIES

### MISSISSIPPI STATE UNIVERSITY

Act revises the use of bond proceeds allocated to Mississippi State university. **HB 1245**

### MUNICIPALITIES

Act authorizes a municipal public body to establish a quorum by allowing videoconferencing of military personnel. **HB 448**

Act authorizes counties and municipalities to donate funds to support of farmers' markets. **HB 535**

Act authorizes a municipality to lease property less than 1500 square feet, but requires two appraisals on such property. **HB 987**

Act permits county or municipality to enter into agreements with economic development projects for the provision of certain utilities. **HB 1255**

Act repeals the preapproval requirement for counties or municipalities desiring to acquire or create a geographic information system. **HB 1407**

Act clarifies the publications in which localities must advertise for the promotion of tourism. **SB 2355**

Act authorizes the investment of surplus funds in interest-bearing accounts. **SB 2567**

### NEW HOME WARRANTY ACT

Act clarifies the definition of major structural defects. **SB 2223**

### NURSING HOME ADMINISTRATORS

Act extends the repealer date on licensure requirements. **SB 2715**

### OIL AND GAS

Act provides that liquefied petroleum gas permit applicants be competent and of good character in order to obtain a permit. **SB 2399**

### PATERNITY PROCEEDINGS

Act clarifies the rescission period for a voluntary acknowledgement of paternity. **SB 2363**

### PEARL RIVER VALLEY WATER SUPPLY DISTRICT RESERVOIR

Act authorizes the reservoir police to participate in multijurisdictional training and operations. **SB 2814**



## LEGISLATIVE SUMMARIES

### PHARMACISTS AND PHARMACY

Act provides that the orthotist/prosthetist certification law does not restrict certain practices by licensed pharmacists. **HB 1151**

Act sets out the procedures for conducting an audit under the audit integrity act and establishes penalties for noncompliance with the act. **HB 1490**

### PHYSICAL THERAPISTS

Act removes the repealer for certain provisions in the physical therapy practice law. **HB 417**

### PHYSICIANS AND SURGEONS

Act establishes the office of Mississippi physician workforce. **HB 317**

Act requires that physicians performing abortions in abortion facilities be board certified in obstetrics and gynecology and have admitting privileges at a local hospital. **HB 1390**

Act enacts the patient's right to informed health care choices act. **SB 2670**

### PLANT INDUSTRY

Act prohibits the cultivation of nonnative plant species for the production of fuel without a special permit. **HB 634**

Act provides for administrative proceedings in case of a violation of provisions regulating plant pests and plant diseases. **HB 634**

### PORTABLE ELECTRONICS INSURANCE

Act sets out requirements for sellers of portable electronics insurance. **HB 894**

### PORT AUTHORITY

Act exempts the port authority from certain public purchasing or procurement regulations. **HB 1091**

### PREPAID LEGAL SERVICES PLANS

Act provides for the frequency of examination of insurers, including prepaid legal services plans. **HB 434**

### PRINCIPAL AND INCOME ACT OF 2013

Act is enacted to replace the revised uniform principal and income law. **HB 732**

## LEGISLATIVE SUMMARIES

### PRISONS AND PRISONERS

Act clarifies that a person committed to an penal institution is committed to the department of corrections, not the institution. **HB 369**

Act provides that, upon revocation of the earned-release supervision of an offender, the time spent on release is to be applied to reduction of the sentence. **HB 371**

Act provides that time served on parole prior to revocation if to be credited toward the original sentence. **HB 372**

Act requires a PEER committee to submit inmate cost per day report and to develop a current cost-based model, prior to entering into private correctional services contracts. **HB 440**

Act extends the repealer regarding the Bolivar county regional facility alcohol and drug treatment program. **HB 454**

Act repeals the provision implementing a regimented inmate discipline program at Walnut Grove correctional facility. **HB 522**

Act establishes a youthful offender unit (YOU) at the Central Mississippi correctional facility. **HB 523**

Act removes the requirement that offenders housed at the Walnut Grove correctional facility be under the age of 22. **HB 523**

Act provides for the reenactment and amendment of the prison overcrowding emergency powers act. **SB 2187**

Act clarifies the prohibition against possessing contraband in correctional facilities, extending the provisions to local facilities. **SB 2263**

### PROPERTY AND CASUALTY INSURANCE

Act provides for a premium discount or rate reduction for building or retrofitting property to resist damage from hurricane or windstorm events. **HB 1410**

Act removes the repealer on the property and casualty actuarial opinion act. **SB 2577**

## LEGISLATIVE SUMMARIES

### PROPERTY TAXES

Act authorizes a county levy, where proceeds are to be provided to the Mississippi Burn Foundation to support construction and operation of the Burn Center Lodge. **HB 544**

Act provides an exemption for military personnel from taxes on motor vehicles. **HB 750**

Act extends the definition of free port warehouse to include facilities for the temporary storage and handling of property pending transit out of state, for the purpose of providing eligibility for a property tax exemption of such property. **SB 2342**

Act revises the procedures for taxing entities to hold public hearings on budgets and tax levies, and to provide notice of such hearings. **SB 2886**

### PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS

Act enacts the new uniform act and repeals the former act. **HB 1104**

### PSYCHOLOGISTS

Act removes the repealer on provisions specifying education and supervised experience requirements for psychologist licensure. **HB 412**

### PUBLIC IMPROVEMENT DISTRICTS

Act sets out various amendments to the public improvement district act. **HB 1261**

### PUBLIC LANDS

Act allows for the cost of cleanup and removal of debris from destroyed buildings and improvements on tax-forfeited lands to be factored into the sales price of the land. **HB 1117**

### PUBLIC OFFICERS AND EMPLOYEES

Act extends the repealer on the requirement for state contributions toward the cost of the state employees health insurance plan. **HB 703**

### PUBLIC TRUST TIDELANDS

Act exempts residential property owners from obtaining a tidelands lease for exercising their littoral and riparian rights. **SB 2557**

### PUBLIC UTILITIES

Act provides that the public utilities laws do not apply to certain video, mobile and Internet services. **HB 825**

## LEGISLATIVE SUMMARIES

Act sets out required driver safety maneuvers when approaching utility vehicles. **HB 984**

### RAILROADS

Act expands the definition of "railroad" to include regional railroad authorities. **SB 2829**

### REGISTERED AGENTS

Act enacts the Mississippi registered agents act. **HB 1162**

### RESPIRATORY CARE PRACTICE ACT

Act revises the provisions regarding licenses and permits for respiratory care practitioners. **SB 2527**

### SALES AND USE TAXES

Act creates a sales and use tax exemption for the sale of utilities to churches. **HB 582**

### SCHOOLS AND EDUCATION

Act requires the local school boards to conduct an annual comprehensive evaluation of the school superintendent. **HB 447**

Act authorizes local school boards to allow for the use of indoor or outdoor school facilities for recreation or sport. **HB 540**

Act sets out the circumstances and procedure for changing of a student's grade. **HB 696**

Act provides for the starting date of the school year. **HB 707**

Act provides for school boards to allow course credit for high school student national guard members attending basic training camp during the summer prior to their senior year. **HB 784**

Act extends the repeal date on the requirement for school districts to submit cost reduction plans to the department of education. **HB 909**

Act repeals the provision establishing standards required of agricultural high schools. **HB 948**

Act amends the requirements for educational services to blind and visually impaired students. **HB 960**



## LEGISLATIVE SUMMARIES

Act eliminates the right to a hearing for a superintendent of schools upon termination or nonrenewal of an employment contract. **SB 2176**

Act provides for the consolidation of multiple school districts into a single countywide district. **SB 2330**

Act clarifies the deadline for notice of nonreemployment of teachers or administrators. **SB 2424**

Act removes the requirement that high school pre-advanced placement courses must be approved by the department of education. **SB 2450**

Act allows for the deduction of the cost of a substitute teacher from an employee's salary where employee is on sick leave. **SB 2452**

Act repeals the provision providing for a reading sufficiency program of instruction to be implemented by the state board. **SB 2453**

Act requires school districts to be responsible for dropout prevention programs. **SB 2454**

## SECURITIES

Act revises the definition of "security account" relating to transfer-on-death securities registration, to include investment management and custody accounts. **HB 865**

## SENTENCING

Act provides that, upon revocation of the earned-release supervision of an offender, the time spent on release is to be applied to reduction of the sentence. **HB 371**

Act provides that time served on parole prior to revocation is to be credited toward the original sentence. **HB 372**

Act provides for the extension of the repeal date for the state parole board. **SB 2195**

Act provides for the extension of the repeal date for state offenders serving sentences in county jails. **SB 2196**

Act provides for the extension of the repeal date for electronic home detention and intensive supervision programs. **SB 2197**

## LEGISLATIVE SUMMARIES

### **SEX OFFENDERS**

Act prohibits registered sex offenders from visiting public beaches and campgrounds. **SB 2256**

### **SHERIFFS**

Act provides that general laws and journals may not provided for free to sheriffs without a specific request in writing. **SB 2501**

### **SMALL BUSINESS REGULATORY FLEXIBILITY ACT**

Act sets out provisions to provide for more flexibility in rulemaking for small businesses. **SB 2398**

### **SPEECH-LANGUAGE PATHOLOGISTS**

Act creates a master's degree loan scholarship program for speech-language pathologists working in public schools. **HB 1082**

### **STATE DEPARTMENTS AND AGENCIES**

Act removes the requirement that invoices for sales of goods and services to the state must be filed with the agency incurring the obligation. **HB 885**

Act requires each entity to publish their annual reports electronically on the Internet. **HB 1452**

### **STATE FIRE MARSHAL**

Act authorizes the appointment of a state chief assistant deputy fire marshal. **HB 726**

### **STATE FISCAL OFFICER**

Act authorizes warrants to be drawn in excess of cash balance against federal programs. **HB 944**

### **SUPREME COURT**

Act provides for judicial salaries and deposits into judicial system operation fund and other funds to provide funding for judicial salaries. **HB 484**

Act sets out the manner in which the supreme court is to make judges available to hear election day contests or disputes. **HB 994**

### **SURPLUS LINES INSURANCE**

Act provides that the surplus lines premium tax does not apply to property risk written by the department of finance and administration on behalf of the state. **HB 1348**

## LEGISLATIVE SUMMARIES

Act provides for the percentage of the nonadmitted policy fee. **SB 2626**

Act requires producers to execute a form indicating why insurance was not placed in the admitted market. **SB 2628**

### TEACHERS

Act sets out the circumstances and procedure for changing of a student's grade. **HB 696**

Act provides that repayment of awards by critical needs teacher scholarship program participants are to be deposited in the consolidated revolving loan fund. **HB 860**

Act creates the office of educator misconduct evaluations. **HB 1144**

Act clarifies the deadline for notice of nonreemployment of teachers or administrators. **SB 2424**

Act allows for the deduction of the cost of a substitute teacher from an employee's salary where employee is on sick leave. **SB 2452**

### TELECOMMUNICATIONS

Act provides that the public utilities laws do not apply to certain video, mobile and Internet services. **HB 825**

### TOURISM

Act clarifies the publications in which localities must advertise for the promotion of tourism. **SB 2355**

Act is enacted to provide for limited liability for persons engaged in agritourism activities. **SB 2439**

### TRADEMARKS

Act clarifies the offense of selling or vending counterfeit goods. **SB 2549**

### TRAFFIC REGULATION

Act sets out required driver safety maneuvers when approaching utility vehicles. **HB 984**

Act prohibits the placement of an automated traffic law enforcement system citation from another jurisdiction on a person's driving record within this state. **SB 2289**

## LEGISLATIVE SUMMARIES

Act authorizes electronic filing of citations for violations of the implied consent law. **SB 2802**

### TRANSPORTATION

Act revises the membership of the public transit task force. **HB 575**

### UNEMPLOYMENT COMPENSATION

Act provides an exemption for direct sellers, and excludes newspaper delivery or distribution from the definition of employment. **HB 451**

### VETERANS

Act authorizes the state veterans affairs board to establish and operate veterans cemeteries. **HB 264**

### VICTIMS OF CRIME

Act makes technical corrections to the crime victims compensation act. **HB 97**

### VULNERABLE PERSONS

Act amends the definitions applicable to the vulnerable person act and the statute of limitations for prosecution of violations. **SB 2367**

Act revises the statute of limitations for the prosecution of felonious abuse of vulnerable persons. **SB 2539**

### WATER SUPPLY AND WATERWORKS

Act authorizes the city of Hattiesburg to enter into contracts for treatment, transportation or disposal of wastewater. **HB 1529**



# CUMULATIVE TABLE OF CODE SECTIONS AFFECTED

MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
1-3-61	Amended		sb2855	1	1
1-5-7	Amended		sb2501	1	1
7-3-15	Amended		sb2501	2	1
7-7-27	Amended		hb0885	1	2
7-7-39	Amended		hb0944	1	2
9-9-11	Amended		hb0484	8	1
9-21-45	Amended		hb0484	2	1
17-2-3	Amended		sb2651	1	1
17-2-7	Amended		hb0773	1	1
17-2-9	Amended		hb0773	2	1
17-3-3	Amended		sb2355	1	2
19-3-1	Amended		hb0585	2	1
19-3-19	Amended		sb2884	1	1
19-3-40	Amended		hb0515	1	2
19-5-10	Amended		hb0263	1	1
19-5-73	Amended		hb0535	2	2
19-5-93	Amended		hb0535	3	2
19-5-105	Amended		hb0545	1	1
19-9-29	Reenacted		sb2567	3	1
19-31-5	Amended		hb1261	1	2
19-31-7	Amended		hb1261	2	2
19-31-9	Amended		hb1261	3	2
19-31-17	Amended		hb1261	4	2
19-31-19	Amended		hb1261	5	2
19-31-23	Amended		hb1261	6	2
19-31-29	Amended		hb1261	7	2
19-31-33	Amended		hb1261	8	2
19-31-35	Amended		hb1261	9	2
19-31-39	Amended		hb1261	10	2
19-31-43	Amended		hb1261	11	2
19-31-45	Amended		hb1261	12	2
19-31-47	Amended		hb1261	13	2
21-3-19	Amended		hb0448	2	2
21-5-13	Amended		hb0448	3	2
21-7-9	Amended		hb0448	4	2
21-8-11	Amended		hb0448	5	2
21-9-39	Amended		hb0448	6	2
21-17-1	Amended		hb0987	1	1
21-19-69	Added		hb0535	1	2
21-33-45	Amended		sb2886	2	1
21-33-323	Amended		sb2567	1	1
21-43-113	Amended		hb0968	4	1
21-43-117	Amended		hb0968	1	1
21-43-119	Amended		hb0968	2	1
21-43-131	Amended		hb0968	3	1
23-15-33	Amended		hb0995	1	2
23-15-35	Reenacted		hb0995	6	2
23-15-285	Amended		hb0585	1	1
23-15-625	Amended		hb0995	2	2
23-15-637	Amended		sb2552	4	2
23-15-657	Amended		hb0995	3	2

# CUMULATIVE TABLE OF CODE SECTIONS AFFECTED

MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
23-15-673	Amended		sb2552	1	2
23-15-687	Amended		sb2552	2	2
23-15-687	Amended		hb0995	4	2
23-15-699	Amended		sb2552	3	2
23-15-721	Amended		sb2552	5	2
23-15-733	Amended		hb0995	5	2
23-15-913	Amended		hb0994	1	2
23-15-927	Amended		hb0993	1	2
23-15-929	Amended		hb0993	2	2
23-15-931	Amended		hb0993	3	2
23-15-937	Amended		hb0993	4	2
23-15-939	Amended		hb0993	5	2
23-15-961	Amended		hb0993	6	2
25-3-35	Amended		hb0484	1	1
25-7-3	Amended		hb0484	3	1
25-7-9	Amended		hb0484	4	1
25-7-13	Amended		hb0361	1	1
25-7-13	Amended		hb0484	5	1
25-9-101	Amended		hb0484	7	1
25-9-115	Added		hb0484	6	1
25-15-15	Amended		hb0703	1	1
25-15-303	Amended		hb0768	1	1
25-15-303	Amended		hb0997	1	1
25-41-5	Amended		hb0448	1	2
25-51-1	Amended		hb1452	4	2
25-51-3	Amended		hb1452	5	2
25-51-5	Amended		hb1452	6	2
25-51-7	Amended		hb1452	7	2
25-58-1	Amended		hb1407	1	1
25-58-21	Reenacted		hb1407	2	1
25-43-3.105	Amended		sb2398	10	2
25-43-4.101	Added		sb2398	1	2
25-43-4.102	Added		sb2398	2	2
25-43-4.103	Added		sb2398	3	2
25-43-4.104	Added		sb2398	4	2
25-43-4.105	Added		sb2398	5	2
25-43-4.106	Added		sb2398	6	2
25-43-4.107	Added		sb2398	7	2
25-43-4.108	Added		sb2398	8	2
27-7-9	Amended		hb1519	1	2
27-7-22.7	Reenacted		sb2613	1	1
27-7-22.9	Reenacted		sb2613	2	1
27-7-22.25	Reenacted		sb2613	4	1
27-7-22.26	Reenacted		sb2613	5	1
27-7-22.36	Amended		sb2656	1	1
27-31-51	Amended		sb2342	1	1
27-31-53	Amended		sb2342	2	1
27-39-203	Amended		sb2886	1	1
27-39-205	Repealed		sb2886	4	1
27-39-317	Amended		sb2886	3	1
27-39-332	Amended		hb0544	1	1
27-51-42.3	Amended		hb0750	1	2
27-65-19	Amended		hb0582	1	2

# CUMULATIVE TABLE OF CODE SECTIONS AFFECTED

MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
27-71-509	Amended		sb2878	12	1
27-101-1	Amended		hb1452	1	2
27-101-3	Amended		hb1452	2	2
27-101-5	Amended		hb1452	3	2
27-104-7	Amended		hb1091	1	2
27-105-305	Amended		hb0966	1	1
27-105-315	Amended		sb2567	2	1
29-1-35	Amended		hb1117	1	1
29-1-57	Amended		hb1117	2	1
29-15-5	Amended		sb2557	1	1
31-1-15	Amended		sb2501	3	1
31-7-1	Amended		hb1091	2	2
31-7-13	Amended		hb1257	2	2
31-7-103	Amended		hb0998	1	2
31-7-119	Amended		hb0998	2	2
31-11-3	Amended		hb1091	3	2
33-4-1	Amended		sb2010	1	2
33-15-17	Amended		hb1418	2	1
33-15-19	Amended		hb1418	1	1
35-1-41	Amended		hb0264	1	1
37-3-2	Amended		hb1144	1	1
37-7-103	Amended		sb2330	2	2
37-7-104	Added		sb2330	1	2
37-7-301	Amended		hb0447	1	2
37-7-307	Amended		sb2452	1	2
37-9-59	Amended		sb2176	3	2
37-9-105	Amended		sb2424	1	2
37-9-109	Amended		sb2176	1	2
37-9-111	Amended		sb2176	2	2
37-13-10	Repealed		sb2453	1	2
37-13-80	Amended		sb2454	1	2
37-15-39	Amended		sb2450	1	2
37-23-193	Amended		hb0960	1	2
37-23-194	Amended		hb0960	2	2
37-23-195	Amended		hb0960	3	2
37-23-197	Amended		hb0960	4	2
37-23-199	Amended		hb0960	5	2
37-23-201	Amended		hb0960	6	2
37-23-203	Amended		hb0960	7	2
37-27-19	Repealed		hb0948	1	1
37-61-8	Amended		hb0909	1	1
37-101-241	Amended		hb1086	1	1
37-103-25	Amended		hb1095	1	1
37-143-12	Added		hb1082	1	2
37-143-19	Amended		hb0860	3	1
37-159-3	Amended		hb0860	1	1
37-159-17	Amended		hb0860	2	1
39-5-6	Amended		hb0269	1	2
41-29-113	Amended		hb0730	1	2
41-29-144	Amended		hb1355	1	1
41-29-146	Amended		sb2186	1	1
41-39-101	Reenacted		sb2685	1	1
41-39-103	Reenacted		sb2685	2	1

# CUMULATIVE TABLE OF CODE SECTIONS AFFECTED

MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
41-39-105	Reenacted		sb2685	3	1
41-39-107	Reenacted		sb2685	4	1
41-39-109	Reenacted		sb2685	5	1
41-39-111	Reenacted		sb2685	6	1
41-39-113	Reenacted		sb2685	7	1
41-39-115	Reenacted		sb2685	8	1
41-39-117	Reenacted		sb2685	9	1
41-39-119	Reenacted		sb2685	10	1
41-39-121	Reenacted		sb2685	11	1
41-39-123	Reenacted		sb2685	12	1
41-39-125	Reenacted		sb2685	13	1
41-39-127	Reenacted		sb2685	14	1
41-39-129	Reenacted		sb2685	15	1
41-39-131	Reenacted		sb2685	16	1
41-39-133	Reenacted		sb2685	17	1
41-39-135	Reenacted		sb2685	18	1
41-39-137	Reenacted		sb2685	19	1
41-39-139	Reenacted		sb2685	20	1
41-39-141	Reenacted		sb2685	21	1
41-39-143	Reenacted		sb2685	22	1
41-39-145	Reenacted		sb2685	23	1
41-39-147	Reenacted		sb2685	24	1
41-39-149	Amended		sb2685	25	1
41-57-23	Amended		sb2363	1	1
41-75-1	Amended		hb1390	1	1
41-86-1	Amended		hb0316	1	1
41-86-3	Repealed		hb0316	8	1
41-86-5	Amended		hb0316	2	1
41-86-7	Amended		hb0316	3	1
41-86-9	Amended		hb0316	4	1
41-86-11	Amended		hb0316	5	1
41-86-13	Amended		hb0316	6	1
41-86-15	Amended		hb0316	7	1
41-86-17	Repealed		hb0316	8	1
41-86-19	Repealed		hb0316	8	1
41-86-21	Repealed		hb0316	8	1
43-1-1	Amended		hb0833	1	2
43-1-2	Amended		hb0833	2	2
43-1-3	Amended		hb0833	3	2
43-1-5	Amended		hb0833	4	2
43-1-55	Amended		hb0833	6	2
43-13-116.1	Added		hb1391	1	2
43-15-201	Amended		sb2479	1	1
43-21-357	Amended		sb2256	1	1
43-21-803	Amended		hb0710	1	1
43-27-20	Amended		hb0833	5	2
43-27-107	Amended		hb0833	7	2
43-47-5	Amended		sb2367	1	2
43-47-19	Amended		sb2367	2	2
45-9-101	Amended		hb0695	1	1
45-11-1	Amended		hb0726	1	1
45-33-26	Amended		sb2256	3	1
45-33-61	Added		sb2256	2	1



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MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
47-5-10	Amended		sb2486	1	1
47-5-105	Amended		hb0525	1	1
47-5-110	Amended		hb0369	1	1
47-5-138	Amended		hb0371	1	2
47-5-193	Amended		sb2263	1	1
47-5-701	Reenacted		sb2187	1	1
47-5-703	Reenacted		sb2187	2	1
47-5-705	Reenacted		sb2187	3	1
47-5-707	Reenacted		sb2187	4	1
47-5-709	Reenacted		sb2187	5	1
47-5-711	Reenacted		sb2187	6	1
47-5-713	Reenacted		sb2187	7	1
47-5-715	Reenacted		sb2187	8	1
47-5-717	Reenacted		sb2187	9	1
47-5-719	Reenacted		sb2187	10	1
47-5-721	Reenacted		sb2187	11	1
47-5-723	Reenacted		sb2187	12	1
47-5-725	Reenacted		sb2187	13	1
47-5-727	Reenacted		sb2187	14	1
47-5-729	Reenacted		sb2187	15	1
47-5-731	Reenacted		sb2187	16	1
47-5-901	Reenacted		sb2196	1	1
47-5-903	Reenacted		sb2196	2	1
47-5-905	Reenacted		sb2196	3	1
47-5-907	Reenacted		sb2196	4	1
47-5-909	Reenacted		sb2196	5	1
47-5-911	Reenacted		sb2196	6	1
47-5-940	Amended		hb0454	1	1
47-5-943	Amended		hb0523	1	2
47-5-947	Repealed		hb0522	1	2
47-5-1001	Reenacted		sb2197	1	1
47-5-1003	Reenacted		sb2197	2	1
47-5-1005	Reenacted		sb2197	3	1
47-5-1007	Reenacted		sb2197	4	1
47-5-1009	Reenacted		sb2197	5	1
47-5-1011	Reenacted		sb2197	6	1
47-5-1013	Reenacted		sb2197	7	1
47-5-1014	Reenacted		sb2197	8	1
47-5-1015	Reenacted		sb2197	9	1
47-5-1211	Amended		hb0440	1	1
47-7-5	Amended		sb2195	1	1
47-7-27	Amended		hb0372	1	2
47-7-49	Amended		hb0422	1	1
49-5-25	Amended		hb0848	1	1
49-5-27	Repealed		hb0848	2	1
49-7-58.3	Amended		hb0756	1	1
49-7-58.3	Amended		sb2325	1	1
49-7-58.4	Amended		hb0756	2	1
49-11-3	Amended		hb0756	3	1
49-11-3	Amended		sb2325	2	1
49-11-27	Amended		sb2325	3	1
49-15-64.1	Amended		sb2295	1	1
49-15-64.3	Amended		sb2295	2	1

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MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
49-15-315	Amended		hb0368	1	1
49-17-30	Amended		sb2812	1	1
49-19-115	Amended		hb0747	1	2
51-9-171	Amended		sb2814	2	2
51-9-175	Amended		sb2814	3	2
51-9-176	Amended		sb2814	1	2
51-9-177	Amended		sb2814	4	2
51-9-179	Amended		sb2814	5	2
51-9-181	Amended		sb2814	6	2
51-9-183	Amended		sb2814	7	2
57-73-25	Amended		sb2609	1	1
57-75-11	Amended		hb1266	1	2
57-105-1	Amended		hb1257	1	2
59-5-1	Amended		hb1091	4	2
59-5-37	Amended		hb1091	5	2
61-3-13	Amended		sb2885	1	2
61-3-15	Amended		sb2885	2	2
61-3-19	Amended		sb2885	3	2
61-3-24	Added		sb2336	1	1
61-3-79	Amended		sb2885	4	2
61-5-19	Amended		sb2885	5	2
63-1-43	Amended		sb2109	1	2
63-1-43	Amended		hb1235	1	2
63-3-103	Amended		sb2283	1	2
63-3-809	Amended		hb0984	1	2
63-9-21	Amended		sb2802	1	2
63-11-30	Amended		hb0681	1	2
65-1-701	Amended		sb2829	1	1
65-7-91	Amended		sb2349	1	2
67-1-5	Amended		sb2878	2	1
67-1-5	Amended		sb2607	1	1
67-1-14	Amended		sb2497	1	2
67-3-1	Amended		sb2878	3	1
67-3-3	Amended		sb2878	1	1
67-3-5	Amended		sb2878	4	1
67-3-7	Amended		sb2878	5	1
67-3-9	Amended		sb2878	6	1
67-3-13	Amended		sb2878	7	1
67-3-17	Amended		sb2878	8	1
67-3-28	Amended		sb2878	9	1
67-3-49	Amended		sb2878	10	1
67-3-53	Amended		sb2878	11	1
67-3-53	Amended		hb1250	1	1
69-2-13	Amended		hb0633	1	1
69-5-3	Amended		sb2912	1	1
69-5-114	Amended		hb0411	1	1
69-25-10	Added		hb0634	4	2
69-25-47	Amended		hb0634	1	2
69-25-51	Amended		hb0634	2	2
69-25-109	Amended		hb0634	3	2
69-37-17	Amended		sb2316	1	2
71-5-11	Amended		hb0451	1	1
73-6-19	Amended		sb2670	14	1

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MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
73-9-61	Amended		sb2670	7	1
73-11-33	Amended		sb2339	1	2
73-11-41	Amended		sb2339	2	2
73-11-43	Amended		sb2339	3	2
73-11-45	Reenacted		sb2339	4	2
73-11-47	Reenacted		sb2339	5	2
73-11-49	Amended		sb2339	6	2
73-11-51	Amended		sb2339	7	2
73-11-53	Amended		sb2339	8	2
73-11-55	Amended		sb2339	9	2
73-11-56	Amended		sb2339	10	2
73-11-57	Reenacted		sb2339	11	2
73-11-57.1	Reenacted		sb2339	12	2
73-11-58	Amended		sb2339	13	2
73-11-59	Reenacted		sb2339	14	2
73-11-61	Reenacted		sb2339	15	2
73-11-63	Reenacted		sb2339	16	2
73-11-65	Reenacted		sb2339	17	2
73-11-67	Reenacted		sb2339	18	2
73-11-69	Amended		sb2339	19	2
73-11-71	Amended		sb2339	20	2
73-13-41	Amended		sb2474	1	1
73-15-29	Amended		sb2670	12	1
73-17-11	Amended		sb2715	1	1
73-19-23	Amended		sb2670	13	1
73-21-97	Amended		sb2670	8	1
73-21-179	Amended		hb1490	1	2
73-21-183	Amended		hb1490	2	2
73-21-191	Added		hb1490	3	2
73-22-1	Amended		hb1151	2	1
73-22-3	Amended		hb1151	1	1
73-23-33	Amended		hb0417	1	1
73-23-35	Amended		hb0417	2	1
73-23-59	Amended		hb0417	3	1
73-25-29	Amended		sb2670	9	1
73-26-5	Amended		sb2670	10	1
73-27-13	Amended		sb2670	11	1
73-31-13	Amended		hb0412	1	1
73-39-77	Amended		sb2670	15	1
73-57-1	Reenacted		sb2527	1	1
73-57-3	Reenacted		sb2527	2	1
73-57-5	Amended		sb2527	3	1
73-57-7	Amended		sb2527	4	1
73-57-9	Reenacted		sb2527	5	1
73-57-11	Amended		sb2527	6	1
73-57-13	Reenacted		sb2527	7	1
73-57-15	Reenacted		sb2527	8	1
73-57-17	Amended		sb2527	9	1
73-57-21	Amended		sb2527	10	1
73-57-25	Amended		sb2527	11	1
73-57-27	Amended		sb2527	12	1
73-57-29	Reenacted		sb2527	13	1
73-57-31	Reenacted		sb2527	14	1

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<b>MS Code Section</b>	<b>Action</b>	<b>Chapter No.</b>	<b>HB No./SB No.</b>	<b>Sec. No.</b>	<b>Pamphlet No.</b>
73-57-33	Amended		sb2527	15	1
73-57-35	Amended		sb2527	16	1
73-57-37	Reenacted		sb2527	17	1
73-57-39	Reenacted		sb2527	18	1
73-59-1	Amended		sb2533	1	1
73-59-3	Amended		sb2533	2	1
73-59-15	Amended		sb2533	3	1
73-65-1	Amended		sb2526	1	1
73-65-3	Amended		sb2526	2	1
73-65-5	Amended		sb2526	3	1
73-65-7	Amended		sb2526	4	1
75-57-49	Amended		sb2399	1	1
75-57-105	Amended		sb2399	2	1
75-63-53	Amended		sb2579	1	1
75-63-59	Amended		sb2579	2	1
75-63-63	Amended		sb2579	3	1
75-63-68	Amended		sb2579	4	1
77-3-3	Amended		hb0825	1	2
77-3-35	Amended		hb0825	2	2
79-4-1.20	Amended		hb1162	20	1
79-4-1.22	Amended		hb1162	21	1
79-4-1.22	Amended		hb0789	1	2
79-4-1.25	Amended		hb1162	22	1
79-4-1.25	Amended		hb0789	2	2
79-4-1.26	Amended		hb1162	23	1
79-4-1.29	Amended		hb0789	3	2
79-4-1.40	Amended		hb0789	4	2
79-4-1.41	Amended		hb1162	24	1
79-4-1.41	Amended		hb0789	5	2
79-4-2.02	Amended		hb1162	25	1
79-4-4.01	Amended		hb0789	6	2
79-4-4.02	Amended		hb0789	7	2
79-4-5.01	Repealed		hb1162	123	1
79-4-5.02	Repealed		hb1162	124	1
79-4-5.03	Repealed		hb1162	125	1
79-4-5.04	Repealed		hb1162	126	1
79-4-6.20	Amended		hb0789	8	2
79-4-7.03	Amended		hb1162	26	1
79-4-7.04	Amended		hb1162	27	1
79-4-7.04	Amended		hb0789	9	2
79-4-7.05	Amended		hb0789	10	2
79-4-7.09	Added		hb0789	11	2
79-4-7.20	Amended		hb1162	28	1
79-4-7.22	Amended		hb0789	12	2
79-4-7.42	Amended		hb0789	13	2
79-4-7.48	Amended		hb1162	29	1
79-4-8.01	Amended		hb0789	14	2
79-4-8.05	Amended		hb0789	15	2
79-4-8.06	Amended		hb0789	16	2
79-4-8.07	Amended		hb0789	17	2
79-4-8.09	Amended		hb1162	30	1
79-4-8.10	Amended		hb0789	18	2
79-4-8.24	Amended		hb0789	19	2



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MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
79-4-8.26	Added		hb0789	20	2
79-4-8.31	Amended		hb0789	21	2
79-4-8.50	Amended		hb0789	22	2
79-4-8.53	Amended		hb0789	23	2
79-4-8.58	Amended		hb0789	24	2
79-4-8.60	Amended		hb0789	25	2
79-4-10.05	Amended		hb1162	31	1
79-4-11.01	Amended		hb0789	26	2
79-4-11.02	Amended		hb0789	27	2
79-4-11.03	Amended		hb0789	28	2
79-4-11.04	Amended		hb0789	29	2
79-4-11.06	Amended		hb0789	30	2
79-4-11.07	Amended		hb1162	32	1
79-4-11.07	Amended		hb0789	31	2
79-4-11.08	Amended		hb0789	32	2
79-4-13.20	Amended		hb0789	33	2
79-4-13.21	Amended		hb0789	34	2
79-4-13.22	Amended		hb0789	35	2
79-4-13.30	Amended		hb1162	33	1
79-4-14.07	Amended		hb1162	34	1
79-4-14.08	Amended		hb1162	35	1
79-4-14.20	Amended		hb1162	36	1
79-4-14.21	Amended		hb1162	37	1
79-4-14.21	Amended		hb0789	36	2
79-4-14.22	Amended		hb1162	38	1
79-4-14.22	Amended		hb0789	37	2
79-4-14.23	Amended		hb1162	39	1
79-4-14.31	Amended		hb1162	40	1
79-4-15.01	Amended		hb0789	38	2
79-4-15.02	Amended		hb0789	39	2
79-4-15.03	Amended		hb1162	41	1
79-4-15.04	Amended		hb1162	42	1
79-4-15.06	Amended		hb0789	40	2
79-4-15.07	Repealed		hb1162	127	1
79-4-15.08	Repealed		hb1162	128	1
79-4-15.09	Repealed		hb1162	129	1
79-4-15.10	Amended		hb1162	43	1
79-4-15.20	Amended		hb1162	44	1
79-4-15.30	Amended		hb1162	45	1
79-4-15.31	Amended		hb1162	46	1
79-4-15.31	Amended		hb0789	41	2
79-4-15.32	Amended		hb1162	47	1
79-4-15.32	Amended		hb0789	42	2
79-4-15.33	Amended		hb1162	48	1
79-4-16.01	Amended		hb0789	43	2
79-4-16.02	Amended		hb0789	44	2
79-4-16.04	Amended		hb1162	49	1
79-4-16.05	Amended		hb1162	50	1
79-4-16.06	Amended		hb0789	45	2
79-4-16.20	Amended		hb0789	46	2
79-4-16.21	Repealed		hb0789	48	2
79-4-16.22	Amended		hb1162	51	1
79-4-17.05	Added		hb0789	47	2

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MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
79-11-109	Amended		hb1162	52	1
79-11-115	Amended		hb1162	53	1
79-11-117	Amended		hb1162	54	1
79-11-131	Reenacted		hb1162	55	1
79-11-137	Amended		hb1162	56	1
79-11-163	Repealed		hb1162	130	1
79-11-165	Repealed		hb1162	131	1
79-11-167	Repealed		hb1162	132	1
79-11-169	Repealed		hb1162	133	1
79-11-201	Amended		hb1162	57	1
79-11-213	Amended		hb1162	58	1
79-11-289	Amended		hb1162	59	1
79-11-299	Amended		hb1162	60	1
79-11-327	Amended		hb1162	61	1
79-11-345	Amended		hb1162	62	1
79-11-347	Amended		hb1162	63	1
79-11-349	Amended		hb1162	64	1
79-11-351	Amended		hb1162	65	1
79-11-353	Amended		hb1162	66	1
79-11-355	Amended		hb1162	67	1
79-11-357	Amended		hb1162	68	1
79-11-367	Amended		hb1162	69	1
79-11-369	Amended		hb1162	70	1
79-11-375	Repealed		hb1162	134	1
79-11-377	Repealed		hb1162	135	1
79-11-379	Repealed		hb1162	136	1
79-11-381	Amended		hb1162	71	1
79-11-383	Amended		hb1162	72	1
79-11-385	Amended		hb1162	73	1
79-11-389	Amended		hb1162	74	1
79-11-391	Amended		hb1162	75	1
79-11-601	Repealed		hb1104	11	1
79-11-603	Repealed		hb1104	11	1
79-11-605	Repealed		hb1104	11	1
79-11-607	Repealed		hb1104	11	1
79-11-609	Repealed		hb1104	11	1
79-11-611	Repealed		hb1104	11	1
79-11-613	Repealed		hb1104	11	1
79-11-615	Repealed		hb1104	11	1
79-11-617	Repealed		hb1104	11	1
79-13-1001	Amended		hb1162	76	1
79-13-1003	Added		hb1162	77	1
79-13-1004	Added		hb1162	78	1
79-13-1005	Added		hb1162	79	1
79-13-1006	Added		hb1162	80	1
79-13-1102	Amended		hb1162	81	1
79-13-1106	Added		hb1162	82	1
79-13-1107	Added		hb1162	83	1
79-13-1108	Added		hb1162	84	1
79-13-1109	Added		hb1162	85	1
79-14-104	Amended		hb1162	86	1
79-14-201	Amended		hb1162	87	1
79-14-202	Amended		hb1162	88	1

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MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
79-14-207	Amended		hb1162	89	1
79-14-809	Added		hb1162	90	1
79-14-810	Added		hb1162	91	1
79-14-811	Added		hb1162	92	1
79-14-812	Added		hb1162	93	1
79-14-902	Amended		hb1162	94	1
79-14-910	Added		hb1162	95	1
79-14-911	Added		hb1162	96	1
79-14-912	Added		hb1162	97	1
79-14-913	Added		hb1162	98	1
79-14-1104	Amended		hb1162	99	1
79-15-109	Amended		hb1162	100	1
79-15-115	Repealed		hb1162	137	1
79-15-117	Repealed		hb1162	138	1
79-15-119	Repealed		hb1162	139	1
79-15-129	Amended		hb1162	101	1
79-15-131	Amended		hb1162	102	1
79-15-135	Amended		hb1162	103	1
79-16-11	Amended		hb1162	104	1
79-16-17	Repealed		hb1162	140	1
79-16-19	Repealed		hb1162	141	1
79-16-21	Repealed		hb1162	142	1
79-16-27	Amended		hb1162	105	1
79-16-29	Amended		hb1162	106	1
79-16-33	Amended		hb1162	107	1
79-29-113	Repealed		hb1162	143	1
79-29-125	Repealed		hb1162	144	1
79-29-201	Amended		hb1162	108	1
79-29-209	Amended		hb1162	109	1
79-29-211	Amended		hb1162	110	1
79-29-231	Amended		hb1162	111	1
79-29-803	Amended		hb1162	112	1
79-29-819	Amended		hb1162	113	1
79-29-823	Amended		hb1162	114	1
79-29-825	Amended		hb1162	115	1
79-29-827	Amended		hb1162	116	1
79-29-913	Amended		hb1162	117	1
79-29-923	Amended		hb1162	118	1
79-29-1003	Amended		hb1162	119	1
79-29-1023	Amended		hb1162	120	1
79-29-1025	Amended		hb1162	121	1
79-29-1203	Amended		hb0416	1	1
79-29-1203	Amended		hb1162	122	1
79-35	Added		hb1162	1	1
79-35-1	Added		hb1162	1	1
79-35-2	Added		hb1162	2	1
79-35-3	Added		hb1162	3	1
79-35-4	Added		hb1162	4	1
79-35-5	Added		hb1162	5	1
79-35-6	Added		hb1162	6	1
79-35-7	Added		hb1162	7	1
79-35-8	Added		hb1162	8	1
79-35-9	Added		hb1162	9	1

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<b>MS Code Section</b>	<b>Action</b>	<b>Chapter No.</b>	<b>HB No./SB No.</b>	<b>Sec. No.</b>	<b>Pamphlet No.</b>
79-35-10	Added		hb1162	10	1
79-35-11	Added		hb1162	11	1
79-35-12	Added		hb1162	12	1
79-35-13	Added		hb1162	13	1
79-35-14	Added		hb1162	14	1
79-35-15	Added		hb1162	15	1
79-35-16	Added		hb1162	16	1
79-35-17	Added		hb1162	17	1
79-35-18	Added		hb1162	18	1
79-35-19	Added		hb1162	19	1
81-5-55	Amended		hb1391	2	2
83-1-191	Amended		sb2578	1	1
83-5-205	Amended		hb0434	1	1
83-5-501	Reenacted		sb2577	1	1
83-5-503	Reenacted		sb2577	2	1
83-5-505	Reenacted		sb2577	3	1
83-5-507	Repealed		sb2577	4	1
83-9-211	Amended		sb2586	1	1
83-11-551	Amended		hb1416	1	1
83-17-401	Amended		sb2618	1	1
83-17-407	Amended		sb2618	2	1
83-21-23	Amended		sb2628	1	1
83-21-25	Amended		hb1348	1	1
83-29-45	Amended		hb0434	2	1
83-34-4	Amended		sb2626	1	1
83-39-3	Amended		hb0631	1	2
83-39-7	Amended		hb0631	2	2
83-39-8	Amended		hb0631	3	2
83-39-27	Amended		hb0631	4	2
83-41-337	Amended		hb0434	3	1
83-49-27	Amended		hb0434	4	1
83-51-31	Amended		sb2324	1	1
83-58-3	Amended		sb2223	1	1
83-58-5	Amended		sb2223	2	1
85-7-185	Amended		hb1301	1	1
91-17	Added		hb0732	1	1
91-17-1	Repealed		hb0732	2	1
91-17-3	Repealed		hb0732	2	1
91-17-5	Repealed		hb0732	2	1
91-17-7	Repealed		hb0732	2	1
91-17-9	Repealed		hb0732	2	1
91-17-11	Repealed		hb0732	2	1
91-17-13	Repealed		hb0732	2	1
91-17-15	Repealed		hb0732	2	1
91-17-17	Repealed		hb0732	2	1
91-17-19	Repealed		hb0732	2	1
91-17-21	Repealed		hb0732	2	1
91-17-23	Repealed		hb0732	2	1
91-17-25	Repealed		hb0732	2	1
91-17-27	Repealed		hb0732	2	1
91-17-29	Repealed		hb0732	2	1
91-17-31	Repealed		hb0732	2	1
91-17-101	Added		hb0732	1	1



# CUMULATIVE TABLE OF CODE SECTIONS AFFECTED

MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
91-17-101	Added		hb0732	1	1
91-17-102	Added		hb0732	1	1
91-17-103	Added		hb0732	1	1
91-17-104	Added		hb0732	1	1
91-17-105	Added		hb0732	1	1
91-17-201	Added		hb0732	1	1
91-17-201	Added		hb0732	1	1
91-17-202	Added		hb0732	1	1
91-17-301	Added		hb0732	1	1
91-17-301	Added		hb0732	1	1
91-17-302	Added		hb0732	1	1
91-17-303	Added		hb0732	1	1
91-17-401	Added		hb0732	1	1
91-17-401	Added		hb0732	1	1
91-17-402	Added		hb0732	1	1
91-17-403	Added		hb0732	1	1
91-17-404	Added		hb0732	1	1
91-17-405	Added		hb0732	1	1
91-17-406	Added		hb0732	1	1
91-17-407	Added		hb0732	1	1
91-17-408	Added		hb0732	1	1
91-17-409	Added		hb0732	1	1
91-17-410	Added		hb0732	1	1
91-17-411	Added		hb0732	1	1
91-17-412	Added		hb0732	1	1
91-17-413	Added		hb0732	1	1
91-17-414	Added		hb0732	1	1
91-17-415	Added		hb0732	1	1
91-17-501	Added		hb0732	1	1
91-17-501	Added		hb0732	1	1
91-17-502	Added		hb0732	1	1
91-17-503	Added		hb0732	1	1
91-17-504	Added		hb0732	1	1
91-17-505	Added		hb0732	1	1
91-17-506	Added		hb0732	1	1
91-17-601	Added		hb0732	1	1
91-17-601	Added		hb0732	1	1
91-17-602	Added		hb0732	1	1
91-17-603	Added		hb0732	1	1
91-17-604	Added		hb0732	1	1
91-21-3	Amended		hb0865	1	1
93-1-5	Amended		sb2851	1	1
93-1-7	Repealed		sb2851	2	1
93-21-5	Amended		hb0780	1	2
93-21-7	Amended		hb0780	2	2
93-21-13	Amended		hb0780	3	2
93-21-15	Amended		hb0780	4	2
93-21-21	Amended		hb0780	5	2
93-21-25	Amended		hb0780	6	2
93-22-9	Amended		hb0780	7	2
97-3-7	Amended		hb0780	8	2
97-15-13	Amended		hb1326	1	1
97-21-57	Amended		sb2549	1	1

# CUMULATIVE TABLE OF CODE SECTIONS AFFECTED

MS Code Section	Action	Chapter No.	HB No./SB No.	Sec. No.	Pamphlet No.
97-29-31	Amended		hb0681	2	2
97-37-11	Repealed		hb0455	1	1
97-41-18	Amended		sb2504	1	1
99-1-5	Amended		sb2367	3	2
99-1-5	Amended		sb2539	1	2
99-3-7	Amended		hb0780	9	2
99-5-11	Amended		hb0780	11	2
99-5-37	Amended		hb0780	10	2
99-15-26	Amended		hb0780	12	2
99-19-73	Amended		hb0484	9	1
99-41-5	Amended		hb0097	1	2
99-41-11	Amended		hb0097	2	2
99-41-17	Amended		hb0097	3	2
99-41-21	Amended		hb0097	4	2
99-41-23	Amended		hb0097	5	2
99-41-29	Amended		hb0097	6	2
99-41-31	Amended		hb0097	7	2
99-47-1	Amended		hb0159	1	2

Mississippi Legislature  
2012 Regular Session

House Bill 90

**Description:** Mississippi Highway 30 Bypass; designate in Prentiss County and the City of Booneville as "F. Wade Lambert Memorial Highway."

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/06 (H) Referred To Transportation
- 2 02/22 (H) Title Suff Do Pass
- 3 02/23 (H) Passed {Vote}
- 4 02/24 (H) Transmitted To Senate
- 5 02/24 (S) Referred To Highways and Transportation
- 6 04/02 (S) Title Suff Do Pass As Amended
- 7 04/04 (S) Amended
- 8 04/04 (S) Passed As Amended {Vote}
- 9 04/05 (S) Returned For Concurrence
- 10 04/10 (H) Concurred in Amend From Senate {Vote}
- 11 04/13 (H) Enrolled Bill Signed
- 12 04/13 (S) Enrolled Bill Signed
- 13 04/19 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 90

---- Additional Information ----

**House Committee:** Transportation

**Senate Committee:** Highways and Transportation

**Principal Author:** Arnold

**2012 GENERAL LAWS OF MISSISSIPPI, HB 90**

*Additional Authors:* Chism, Turner



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 90

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Arnold, Chism, Turner

To: Transportation

HOUSE BILL NO. 90  
(As Sent to Governor)

AN ACT TO DESIGNATE MISSISSIPPI HIGHWAY 30 BYPASS IN PRENTISS COUNTY AND THE CITY OF BOONEVILLE, MISSISSIPPI, AS "F. WADE LAMBERT MEMORIAL HIGHWAY" TO DESIGNATE MISSISSIPPI HIGHWAY 15 IN CHICKASAW COUNTY AND THE CITY OF HOUSTON AS "VETERANS' MEMORIAL HIGHWAY"; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) That segment of Mississippi Highway 30 Bypass in Prentiss County and the City of Booneville, Mississippi, beginning at its intersection with U.S. Highway 45 and extending easterly to its intersection with Mississippi Highway 30, is designated and shall be known as the "F. Wade Lambert Memorial Highway."

(2) The Mississippi Department of Transportation shall erect and maintain appropriate signs along and approaching the segment of highway described in subsection (1) of this section.

**SECTION 2.** (1) That segment of Mississippi Highway 15 within Chickasaw County and the corporate limits of the City of Houston is designated and shall be known as the "Veterans' Memorial Highway."

(2) The Mississippi Department of Transportation shall erect and maintain appropriate signs along and approaching the segment of highway described in subsection (1) of this section.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 97

**Description:** Crime Victims' Compensation Act; revise.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/06 (H) Referred To Judiciary B
- 2 03/06 (H) Title Suff Do Pass Comm Sub
- 3 03/09 (H) Committee Substitute Adopted
- 4 03/09 (H) Passed *{Vote}*
- 5 03/13 (H) Transmitted To Senate
- 6 03/19 (S) Referred To Judiciary, Division B
- 7 04/03 (S) Title Suff Do Pass As Amended
- 8 04/05 (S) Amended
- 9 04/05 (S) Passed As Amended *{Vote}*
- 10 04/10 (S) Returned For Concurrence
- 11 04/19 (H) Concurred in Amend From Senate *{Vote}*
- 12 04/24 (H) Enrolled Bill Signed
- 13 04/24 (S) Enrolled Bill Signed
- 14 05/01 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Replaced by Substitute*

  [S] Substitute No 1 for Committee Amendment No 1 *Adopted* *Voice Vote*

  Amendment Report for House Bill No. 97

**Code Section:** A 099-0041-0005, A 099-0041-0011, A 099-0041-0017, A 099-0041-0021, A 099-0041-0023, A 099-0041-0029, A 099-0041-0031

----- Additional Information -----

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 97

*House Committee:* Judiciary B

*Senate Committee:* Judiciary, Division B

*Principal Author:* Buck (72nd)

*Additional Authors:* Buck (5th)

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 97

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Buck (72nd), Buck (5th) To: Judiciary B

HOUSE BILL NO. 97  
(As Sent to Governor)

AN ACT TO AMEND SECTIONS 99-41-5, 99-41-11, 99-41-17, 99-41-21, 99-41-23, 99-41-29 AND 99-41-31, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL REVISIONS TO THE MISSISSIPPI CRIME VICTIMS' COMPENSATION ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 99-41-5, Mississippi Code of 1972, is amended as follows:

99-41-5. As used in this chapter, unless the context otherwise requires, the term:

(a) "Allowable expense" means reasonable charges incurred for reasonably needed:

(i) Products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care, but not to exceed Fifteen Thousand Dollars (\$15,000.00);

(ii) Mental health counseling and care not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the victim and victim's family member; provided, however, if there is more than one (1) family member, the amount of compensation awarded shall be prorated and not to exceed Three Thousand Five Hundred Dollars (\$3,500.00);

(iii) Expenses related to funeral, cremation or burial, but not to exceed a total charge of Six Thousand Five Hundred Dollars (\$6,500.00) and transportation costs to arrange or attend services, but not to exceed Eight Hundred Dollars (\$800.00); and

(iv) Necessary expenses, including, but not limited to, temporary housing and relocation assistance for



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victims of domestic violence in imminent danger, crime scene cleanup, court-related travel, execution travel, property damage repair and replacement costs for windows, doors, locks or other security devices of a residential dwelling. The division shall establish, by administrative rule, guidelines and monetary limits for such expenses.

(b) "Claimant" means any of the following persons applying for compensation under this chapter:

(i) A victim;

(ii) A dependent of a victim who has died because of criminally injurious conduct;

(iii) The surviving parent, spouse, child or any person who is legally obligated to pay or has paid medical, funeral or other allowable expenses incurred as a result of the criminally injurious conduct which caused the victim's injuries and/or death;

(iv) Family members of the victim who incur mental health counseling expenses as a result of the criminally injurious conduct which caused the victim's injuries and/or death; or

(v) A person authorized to act on behalf of any of the persons enumerated in subparagraphs (i), (ii), (iii) and (iv) of this paragraph; however, "claimant" shall not include any of the following: provider or creditor of victim; assignee of provider or creditor, including a collection agency; or another person or entity other than those enumerated in this paragraph.

(c) "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this chapter which the claimant has received, or which is readily available to the claimant, from any one or more of the following:

(i) The offender;

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(ii) The government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality of two (2) or more states;

(iii) Social security, Medicare and Medicaid;

(iv) Workers' compensation;

(v) Wage continuation programs of any employer;

(vi) Proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct;

(vii) A contract providing prepaid hospital and other health care services or benefits for disability; or

(viii) Any temporary nonoccupational disability insurance.

(d) "Criminally injurious conduct" means an act occurring or attempted within the geographical boundaries of this state, or to a resident of Mississippi while that resident is within any other state of the United States or any foreign country, which state or foreign country does not provide compensation for those injuries caused by an act for which compensation would be available had the act occurred in Mississippi, and which act results in personal injury or death to a victim for which punishment by fine, imprisonment or death may be imposed. For purposes of this chapter, "criminally injurious conduct" shall also include federal offenses committed within the state that result in personal injury or death to a victim and which are punishable by fine, imprisonment or death, and delinquent acts as defined in Section 43-21-105 which result in personal injury or death to a victim and which, if committed by an adult, would be a crime punishable by fine, imprisonment or death.

(e) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the death of the victim

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where the death occurred as a result of criminally injurious conduct.

(f) "Economic loss of a dependent" means loss, after death of the victim, of contributions or things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim.

(g) "Economic loss" means monetary detriment consisting only of allowable expense, work loss and, if injury causes death, economic loss of a dependent, but shall not include noneconomic loss or noneconomic detriment.

(h) "Family member" means the victim's spouse, parent, grandparent, stepparent, child, stepchild, grandchild, brother, sister, half brother, half sister or spouse's parent.

(i) "Hospital ancillary services" means those hospital support services other than room, board and medical and nursing services that are provided to hospital patients in the course of care including, but not limited to, laboratory, radiology, pharmacy and physical therapy services.

(j) "Noneconomic loss or detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

(k) "Work loss" means loss of income from work the victim or claimant would have performed if the victim had not been injured, but reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing, but unreasonably failed to undertake.

(l) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct, regardless of whether that person was the intended victim of the criminally

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injurious conduct. This definition may include a person who suffers personal injury or death as a result of criminally injurious conduct while going to the aid of another person or a duly sworn law enforcement officer, or while attempting to prevent a crime from occurring.

**SECTION 2.** Section 99-41-11, Mississippi Code of 1972, is amended as follows:

99-41-11. (1) The director shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) The director shall make such investigations, administer such oaths or affirmations and receive such evidence as he deems relevant and necessary to make a determination on any application received. The director shall have the power to subpoena witnesses, compel their attendance and require the production of records and other evidence. Application to a court for aid in enforcing a subpoena may be made in the name of the director. To the extent that funds are appropriated or otherwise available, the Attorney General may employ such personnel, including expert witnesses, as may be required in connection with particular applications before the director, and the director may take judicial notice of general, technical and scientific facts within his specialized knowledge.

(3) The director may settle a claim by stipulation, agreed settlement, consent order or default.

(4) The director may request access to and obtain from prosecuting attorneys or law enforcement officers, as well as state and local agencies, any reports of investigations or other data necessary to assist the director in making a determination of eligibility for compensation under the provisions of this chapter.

(5) Notwithstanding any other provision of law, every law enforcement agency and prosecuting attorney in the state shall



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provide to the director, upon request, a complete copy of the report regarding the incident and any supplemental reports involving the crime or incident giving rise to a claim filed pursuant to this chapter within thirty (30) days of such request.

(6) Any statute providing for the confidentiality of a claimant or victim's court record shall not be applicable under this chapter, notwithstanding the provisions of any other law to the contrary; provided, however, any such record or report which is otherwise protected from public disclosure by the provisions of any other law shall otherwise remain subject to the provisions of such law.

(7) The director may require that the claimant submit with the application material substantiating the facts stated in the application.

(8) After processing an application for compensation filed under rules and regulations promulgated by the Attorney General, the director shall enter an order stating:

(a) Findings of fact;

(b) The decision as to whether or not compensation shall be awarded;

(c) The amount of compensation, if any, due under this chapter;

(d) The person or persons to whom any compensation should be paid;

(e) The percentage share of the total of any compensation award and the dollar amount each person shall receive; and

(f) Whether disbursement of any compensation awarded shall be made in a lump sum or in periodic payments.

(9) The director on his own motion or on request of the claimant may reconsider a decision granting or denying an award or determining its amount. An order on reconsideration of an award shall not require a refund of amounts previously paid unless the

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award was obtained by fraud or upon finding that the victim's or claimant's actions and/or circumstances would no longer make the victim or claimant eligible.

(10) If a claimant disagrees with the decision of the director, he may contest such decision to the Attorney General within thirty (30) days after notification of issuance of the decision. There shall be no appeal of a decision of the director except as set forth in this subsection.

(11) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice pursuant to regulations promulgated pursuant to this chapter and may offer evidence and argument on any issue relevant to the claim and may examine witnesses and offer evidence in reply to any matter of an evidentiary nature relevant to the claim. The Attorney General shall have the power to subpoena witnesses, compel their attendance and require the production of records and other evidence. The decision of the Attorney General becomes the final decision. A record of the hearing in a contested case shall be made and shall be transcribed upon request of any party who shall pay transcription costs unless otherwise ordered by the Attorney General.

**SECTION 3.** Section 99-41-17, Mississippi Code of 1972, is amended as follows:

99-41-17. (1) Compensation shall not be awarded under this chapter:

(a) Unless the criminally injurious conduct occurred after July 1, 1991;

(b) Unless the claim has been filed with the director within thirty-six (36) months after the crime occurred, or in cases of child sexual abuse, within thirty-six (36) months after the crime was reported to law enforcement or the Department of Human Services, but in no event later than the victim's twenty-fifth birthday. For good cause, the director may extend

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the time period allowed for filing a claim for an additional period not to exceed twelve (12) months;

(c) To a claimant or victim who was the offender or an accomplice to the offender, or, except in cases of children under the age of consent as specified in Section 97-3-65, 97-3-97 or 97-5-23, Mississippi Code of 1972, who encouraged or in any way knowingly participated in criminally injurious conduct;

(d) To another person, if the award would unjustly benefit the offender or accomplice;

(e) Unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or unless it is found that there was good cause for the failure to report within such time;

(f) To any claimant or victim when the injury or death occurred while the victim was confined in any federal, state, county or city jail or correctional facility;

(g) If the victim was injured as a result of the operation of a motor vehicle, boat or airplane, unless the vehicle was used by the offender (i) while under the influence of alcohol or drugs, (ii) as a weapon in the deliberate attempt to injure or cause the death of the victim, (iii) in a hit-and-run accident by leaving the scene of an accident as specified in Section 63-3-401, or (iv) to flee apprehension by law enforcement as specified in Sections 97-9-72 and 97-9-73;

(h) If, following the filing of an application, the claimant failed to take further steps as required by the division to support the application within forty-five (45) days of such request made by the director or failed to otherwise cooperate with requests of the director to determine eligibility, unless failure to provide information was beyond the control of the claimant;

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(i) To a claimant or victim who, subsequent to the injury for which application is made, is convicted of any felony, and the conviction becomes known to the director;

(j) To any claimant or victim who has been previously convicted as, or otherwise meets the definition of, a habitual criminal as defined in Section 99-19-81;

(k) To any claimant or victim who, at the time of the criminally injurious conduct upon which the claim for compensation is based, engaged in conduct unrelated to the crime upon which the claim for compensation is based that either was (i) a felony, or (ii) a delinquent act which, if committed by an adult, would constitute a felony.

(l) To any claimant or victim who knowingly furnishes any false or misleading information or knowingly fails or omits to disclose a material fact or circumstance.

(2) Compensation otherwise payable to a claimant shall be diminished to the extent:

(a) That the economic loss is recouped from other sources, including collateral sources; and

(b) Of the degree of responsibility for the cause of injury or death attributable to the victim or claimant.

(3) Upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies and prosecuting attorneys, an award of compensation may be denied, withdrawn or reduced.

(4) Compensation otherwise payable to a claimant or victim may be denied or reduced to a claimant or victim who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based.

**SECTION 4.** Section 99-41-21, Mississippi Code of 1972, is amended as follows:



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 97

99-41-21. (1) If compensation is awarded the state shall be subrogated to all the rights of a claimant or victim to receive or recover from a collateral source to the extent that compensation was awarded.

(2) In the event that the claimant or victim recovers compensation, other than under the provisions of this chapter, for injuries or death resulting from criminally injurious conduct, the claimant or victim shall retain, as trustee, so much of the recovered funds as necessary to reimburse the Crime Victims' Compensation Fund, as created in Section 99-41-29, to the extent that compensation was awarded to the claimant or victim from such fund. Such funds as are retained in trust under the provisions of this section shall be promptly deposited in the Crime Victims' Compensation Fund created in Section 99-41-29.

(3) If a claimant or victim brings an action to recover damages related to the criminally injurious conduct upon which compensation is claimed or awarded, the claimant shall give the director written notice of the action. After receiving such notice the director may join in the action as a party plaintiff to recover any compensation awarded.

**SECTION 5.** Section 99-41-23, Mississippi Code of 1972, is amended as follows:

99-41-23. (1) Compensation for work loss may not exceed Six Hundred Dollars (\$600.00) per week, not to exceed fifty-two (52) weeks; the total amount of the award may not exceed the aggregate limitation of this section.

(2) Compensation for economic loss of a dependent may not exceed Six Hundred Dollars (\$600.00) per week not to exceed fifty-two (52) weeks; provided, however, if there is more than one (1) dependent per victim the amount of compensation awarded shall be prorated among the dependents and the total amount of the award may not exceed the aggregate limitation of this section.

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(3) In the event of the victim's death, compensation for work loss of claimant may not exceed Six Hundred Dollars (\$600.00) per week not to exceed one (1) week; provided, however, if there is more than one (1) claimant per victim, the amount of compensation awarded shall be prorated among the claimants and the total amount of the award may not exceed Six Hundred Dollars (\$600.00).

(4) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed Twenty Thousand Dollars (\$20,000.00) in the aggregate.

(5) A determination that compensation shall be awarded may provide for payment to a claimant in a lump sum or in installments. All medical bills may be paid directly to affected health care providers. At the request of the claimant, the director may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding of either of the following:

(a) That the award in a lump sum will promote the interests of the claimant; or

(b) That the present value of all future economic loss, other than allowable expense, does not exceed One Thousand Dollars (\$1,000.00).

(6) An award payable in installments for future economic loss may be made only for a period as to which the future economic loss can reasonably be determined. An award payable in installments for future economic loss may be modified upon findings that a material and substantial change of circumstances has occurred.

(7) If a hospital or hospital ancillary service provider accepts payment from the division on behalf of the victim or claimant, the division may require that the provider shall not collect or attempt to collect further payment from the victim, the

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claimant, or the division, except that hospital and hospital ancillary service providers may collect or attempt to collect from collateral sources available to the victim or the claimant. The division may also make any such payment contingent upon the provider limiting its right to collect from the victim, the claimant, or the division; or contingent upon the provider entering into a covenant not to sue the victim, the claimant or the division.

(8) An award shall not be subject to execution, attachment, garnishment or other process, except that an award shall not be exempt from orders for the withholding of support for minor children in accordance with Section 93-11-71, and except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

(9) An assignment by the claimant to any future award under the provisions of this chapter is unenforceable, except:

(a) An assignment of any award for work loss to assure payment of court-ordered alimony, maintenance or child support; or

(b) An assignment for any award for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and which are provided or are to be provided by the assignee.

(10) Subsections (8) and (9) of this section prevail over Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform Commercial Code to the extent, if any, that Sections 75-9-406 and 75-9-408 may otherwise be applicable.

**SECTION 6.** Section 99-41-29, Mississippi Code of 1972, is amended as follows:

99-41-29. (1) From and after July 1, 1990, there is hereby created in the State Treasury a special interest-bearing fund to

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be known as the Crime Victims' Compensation Fund. The monies contained in the fund shall be held in trust for the sole purpose of payment of awards of compensation to victims and claimants pursuant to this chapter, the payment of all necessary and proper expenses incurred by the division in the administration of this chapter, payment of sexual assault examinations pursuant to Section 99-37-25, payment of Address Confidentiality Program administrative expenses pursuant to Section 99-47-1(7) and payment of other expenses in furtherance of providing assistance to victims of crime through information referrals, advocacy outreach programs and victim-related services. Expenditures from the fund shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, and upon requisitions signed by the Attorney General or his duly designated representative in the manner provided by law. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of compensating the victims of crime and other claimants under this chapter; (b) the interest accruing to the fund; (c) monies recovered by the director under the provisions of Section 99-41-21; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

(2) No compensation payments shall be made which exceed the amount of money in the fund. The state shall not be liable for a written order to pay compensation, except to the extent that monies are available in the fund on the date the award is ordered. The Attorney General shall establish such rules and regulations as shall be necessary to adjust awards and payments so that the total amount awarded does not exceed the amount of money on deposit in the fund. Such rules and regulations may include, but shall not be limited to, the authority to provide for suspension of payments and proportioned reduction of benefits to all claimants; provided,



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however, no such reductions as provided for shall entitle claimants to future retroactive reimbursements in future years.

**SECTION 7.** Section 99-41-31, Mississippi Code of 1972, is amended as follows:

99-41-31. It is unlawful, except for purposes directly connected with the administration of the division and the processing of a claim, for any person to solicit, disclose, receive or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards under this chapter without the written consent of the claimant or recipient. The records, papers, files and communications of the division, director, staff and agents must be regarded as confidential information and privileged and not subject to disclosure under any condition including the Mississippi Public Records Act of 1983.

**SECTION 8.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 159

**Description:** Address confidentiality program in domestic violence cases; revise.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/07 (H) Referred To Judiciary A
- 2 02/22 (H) Title Suff Do Pass Comm Sub
- 3 03/08 (H) Committee Substitute Adopted
- 4 03/08 (H) Passed {Vote}
- 5 03/09 (H) Transmitted To Senate
- 6 03/16 (S) Referred To Judiciary, Division B
- 7 04/03 (S) Title Suff Do Pass As Amended
- 8 04/05 (S) Amended
- 9 04/05 (S) Passed As Amended {Vote}
- 10 04/10 (S) Returned For Concurrence
- 11 04/11 (H) Concurred in Amend From Senate {Vote}
- 12 04/18 (H) Enrolled Bill Signed
- 13 04/18 (S) Enrolled Bill Signed
- 14 04/24 Approved by Governor

**Amendments:**



[S] Committee Amendment No 1 **Adopted** *Voice Vote*



Amendment Report for House Bill No. 159

**Code Section:** A 099-0047-0001

----- Additional Information -----

**House Committee:** Judiciary A

**Senate Committee:** Judiciary, Division B

**2012 GENERAL LAWS OF MISSISSIPPI, HB 159**

*Principal Author:* Buck (72nd)

*Additional Authors:* Buck (5th)

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 159

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Buck (72nd), Buck (5th)

To: Judiciary A

HOUSE BILL NO. 159  
(As Sent to Governor)

AN ACT TO AMEND SECTION 99-47-1, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN PROVISIONS OF THE ADDRESS CONFIDENTIALITY PROGRAM IN DOMESTIC VIOLENCE CASES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 99-47-1, Mississippi Code of 1972, is amended as follows:

99-47-1. (1) **Definitions.** As used in this section:

(a) "Confidential address" means any residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this section.

(b) "Program participant" means a person certified as a program participant under this section.

(c) "Domestic violence" means any of the following acts committed against a current or former spouse, a person living as a spouse or who formerly lived as a spouse or a child of persons living as spouses or who formerly lived as spouses, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person with whom the defendant has a biological or legally adopted child in common, or a person in a current or former dating relationship:

(i) A violation of a domestic violence protection order;

(ii) Simple or aggravated domestic violence as defined in Section 97-3-7(3) or 97-3-7(4); or

(iii) Threats of such acts.



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(d) "Sexual assault" means an act as defined in Section 45-33-23(g) as a sex offense.

(e) "Stalking" means an act as defined in Section 97-3-107 or Section 97-45-15.

(f) "Substitute address" means an address designated and assigned by the Office of the Attorney General to a program participant as a substitute mailing address under the Address Confidentiality Program.

(g) "Victim" means an individual against whom domestic violence, sexual assault, or stalking has been committed.

(2) **Address Confidentiality Program.** (a) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply to the Office of the Attorney General to have an address designated by the Office of the Attorney General serve as the substitute address for the person, the minor or the incapacitated person. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Office of the Attorney General and if it contains:

(i) A sworn statement by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, stalking, or sexual assault, and that the applicant fears for his or her safety, or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(ii) A designation of the Office of the Attorney General as agent for purposes of services of process and for the purpose of receipt of mail;

(iii) The confidential address where the applicant can be contacted by the Office of the Attorney General, and the telephone number or numbers where the applicant can be contacted by the Office of the Attorney General;

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(iv) The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, stalking, or sexual assault;

(v) A statement of any existing or pending court order or court action involving the applicant that is related to divorce proceedings, child support, child custody, or child visitation; the court that issued each order or has jurisdiction over an action shall be noted;

(vi) The signature of the applicant and a representative of a domestic violence shelter or rape crisis center as designated under subsection (6) who assisted in the preparation of the application;

(vii) The date on which the applicant signed the application; and

(viii) Evidence that the applicant is a victim of domestic violence, sexual assault, or stalking. This evidence shall include at least one (1) of the following:

1. Law enforcement, court or other local, state or federal agency records or files;

2. Documentation from a domestic violence shelter or rape crisis center; or

3. Other form of evidence as determined by the Office of the Attorney General.

(b) Applications shall be filed with the Office of the Attorney General.

(c) Upon approval of an application, the Office of the Attorney General shall certify the applicant as a program participant. Upon certification, the Office of the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. Applicants shall be certified for four (4) years following the date of

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certification unless the certification is withdrawn, cancelled or invalidated before that date.

(d) A program applicant who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application or while a program participant, shall be guilty of a misdemeanor, punishable by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six (6) months.

(e) A fraudulent attempt to gain access to a program participant's confidential address shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars (\$2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years.

(f) Knowingly entering the Address Confidentiality Program to evade civil liability or criminal prosecution shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars (\$2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years.

(g) A program participant may terminate the certification by filing a notarized request for withdrawal from the program with the Office of the Attorney General.

(3) **Certification cancellation.** (a) If the program participant obtains a name change, the person's program participation is terminated and the person may immediately reapply for certification under the new name.

(b) The Office of the Attorney General may cancel a program participant's certification if there is a change in the residential address or telephone number from the address or the telephone number listed for the program participant on the

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 159

application unless the program participant provides the Office of the Attorney General with a minimum of seven (7) days' notice before the change of address occurs.

(c) The Office of the Attorney General may cancel certification of a program participant if mail forwarded by the Office of the Attorney General to the program participant's confidential address is returned as undeliverable or if service of process documents are returned to the Office of the Attorney General as unable to be served.

(d) The Office of the Attorney General shall cancel certification of a program participant who applies using false information.

(e) The Office of the Attorney General shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. That program participant shall have thirty (30) days from receipt of notification of cancellation to appeal the cancellation decisions under procedures adopted by the Office of the Attorney General.

(f) An individual who ceases to be a program participant is responsible for notifying persons, who use the substitute address designated by the Office of the Attorney General as the program participant's address, that the designated substitute address is no longer the individual's address.

(4) **Agency use of designated address.** (a) Except as otherwise provided in this section, a program participant may request that public bodies use the address designated by the Office of the Attorney General as the participant's substitute address. The program participant, and not the Office of the Attorney General, domestic violence shelter, nor rape crisis center, is responsible for requesting that any public body use the address designated by the Office of the Attorney General as the substitute address of the program participant. If there is any criminal proceeding on behalf of the program participant, the



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program participant is also responsible for notifying any law enforcement agency and the district attorney's office of the person's participation in the program. There shall be no responsibility on the part of any district attorney's office or any law enforcement agency to request that a public body use the substitute address. Public bodies shall accept the address designated by the Office of the Attorney General as a program participant's substitute address, unless the Office of the Attorney General has determined that:

(i) The public body has a bona fide statutory or administrative requirement for the use of the confidential address of the program participant as defined in this section; and

(ii) The confidential address will be used only for those statutory and administrative purposes.

(b) A program participant may use the substitute address designated by the Office of the Attorney General as his or her work address.

(c) The Office of the Attorney General shall forward all first-class, certified or registered mail to the program participant at the confidential address provided by the program participant. The Office of the Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

(d) A program participant's name, confidential address, telephone number and any other identifying information within the possession of a public body, as defined by Section 25-61-3, shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983. The program participant's actual name, address and telephone number shall be confidential and no public body shall disclose the program participant's name, address, telephone number, or any other identifying information.

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(5) **Disclosure of records prohibited; exceptions.** A program participant's confidential address and telephone number and any other identifying information in the possession of the Office of the Attorney General shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983, and shall not be disclosed during discovery in any criminal prosecution. The Office of the Attorney General shall not make any records in a program participant's file available for inspection or copying other than the address designated by the Office of the Attorney General, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency for official use only, but not to be included in any reports made by the law enforcement agency or required to be produced in discovery in any criminal prosecution;

(b) If directed by a court order, to a person identified in the order; or

\* \* \*

(c) To verify, if requested by a public body, the participation of a specific program participant, in which case the Office of the Attorney General may only confirm participation in the program and confirm information supplied by the requester.

(6) **Assistance for program applicants.** The Office of the Attorney General shall refer \* \* \* potential participants to domestic violence shelters or rape crisis centers that provide shelter and counseling services to either victims of domestic violence, stalking, or sexual assault to assist persons applying to be program participants.

(7) **Address confidentiality funding.** Expenses of administering the Address Confidentiality Program shall be paid from the Crime Victims' Compensation Fund.

(8) **Immunity.** The Office of the Attorney General and/or its agents and/or employees are immune from civil and/or criminal

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 159

liability for damages for conduct within the scope and arising out of the performance of the duties imposed under this section. Any district attorney and his agents and employees, any law enforcement agency and its agents and employees and any local or state agency and its agents and employees are immune from liability, whether civil or criminal, for damages for conduct within the scope and arising out of the program. Any employee or representative of a domestic violence shelter or rape crisis center who acts in good faith to assist a victim complete an application for participation in the Address Confidentiality Program shall be immune from civil and/or criminal liability. Any assistance \* \* \* rendered pursuant to this section, by the Office of the Attorney General, its agents or employees, shall in no way be construed as legal advice.

(9) **Adoption of rules.** The Office of the Attorney General Victim Compensation Division is authorized to adopt rules and regulations as shall be necessary for carrying out the provisions of this section.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 269

**Description:** New Capitol; Archives and History employ a Curator of the Capitol to oversee, approve and monitor care of.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority



*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Public Property
- 2 02/21 (H) Title Suff Do Pass
- 3 02/27 (H) Passed {Vote}
- 4 02/28 (H) Transmitted To Senate
- 5 02/29 (S) Referred To Public Property
- 6 03/29 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/17 (H) Concurred in Amend From Senate {Vote}
- 11 04/19 (H) Enrolled Bill Signed
- 12 04/19 (S) Enrolled Bill Signed
- 13 04/26 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *Voice Vote*

  [S] Amendment No 1 to Committee Amendment No 1 **Adopted** *Voice Vote*

  Amendment Report for House Bill No. 269

**Code Section:** A 039-0005-0006

---- Additional Information ----

**House Committee:** Public Property



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 269

*Senate Committee:* Public Property

*Principal Author:* Martinson

*Additional Authors:* Mettetal, Clark, Scott

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 269

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Martinson, Mettetal,  
Clark, Scott

To: Public Property

HOUSE BILL NO. 269  
(As Sent to Governor)

AN ACT TO AMEND SECTION 39-5-6, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE BOARD OF TRUSTEES OF THE DEPARTMENT OF ARCHIVES AND HISTORY SHALL EMPLOY A CURATOR OF THE NEW CAPITOL BUILDING AND TO PRESCRIBE THE DUTIES OF THE CURATOR; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 39-5-6, Mississippi Code of 1972, is amended as follows:

39-5-6. The duties and powers of the Board of Trustees of the Department of Archives and History shall include, in addition to other duties and powers granted or prescribed by law, the following:

(a) To promulgate rules and regulations governing the use of the historic portion of the Governor's Mansion;

(b) To promulgate rules and regulations governing the acquisition of furniture and furnishings, including, but not limited to, carpets, rugs, paintings, draperies and objects of art, for the original or historic portion of the Governor's Mansion;

(c) To employ a curator of the mansion who shall have the following duties:

(i) To maintain a descriptive inventory of and be responsible for the care and custody of all furniture and furnishings in the Governor's Mansion that have been catalogued by the Department of Archives and History, including flat silver and silver hollowware. \* \* \* However, the Department of Finance and Administration shall maintain a descriptive inventory of and be responsible for the care and custody of all publicly owned furniture and furnishings in the Governor's Mansion that have not

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 269

been catalogued by the Department of Archives and History,  
including flat silver and silver hollowware; and \* \* \*

(ii) To conduct an educational training program for staff and volunteer guides who may conduct tours of the mansion when it is open to the public at specified times agreed upon by the Governor;

(d) To promote the donation or loaning of money or property, real or personal, from any agency of the United States, state or local government, any person, firm, corporation, association or group, for the purpose of furnishing or decorating the original or historic portion of the Governor's Mansion;

(e) To accept such donations of money or property, real or personal, from any agency of the United States, state or local government, any person, firm, corporation, association or group, for the purpose of furnishing or decorating the original or historic portion of the Governor's Mansion, provided that the board of trustees shall not be required to accept any donation of furniture or furnishings without its consent;

(f) To sell, donate or otherwise dispose of unused surplus property of the Governor's Mansion, excluding any property located in the mansion which belongs to the Governor's Office, and to deposit the proceeds of such sales in the Governor's Mansion Fund of the Board of Trustees of the Department of Archives and History for use, in the board's discretion, in acquiring furniture or furnishings, including, but not limited to, carpets, rugs, paintings, draperies and objects of art, for the original or historic portion of the Governor's Mansion; \* \* \*

(g) To review and approve any major changes in the architecture, furniture, furnishings, decoration or landscaping of the grounds of the Governor's Mansion; and

(h) To employ a Curator of the New Capitol Building,  
who shall have the following powers and duties:

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(i) To oversee, initiate, approve and monitor the care of the New Capitol Building and grounds to ensure long-term preservation, conservation and maintenance of the building, historic furnishings and grounds;

(ii) To coordinate with personnel of the Department of Finance and Administration and the project professionals on any repair, renovation or restoration plans for the New Capitol Building or grounds, ensuring that all work is in accordance with the Secretary of the Interior's Standards for Rehabilitation;

(iii) To request quotations for projects at the New Capitol Building or grounds upon instructions from the Department of Finance and Administration; apply for permits from the Department of Archives and History when applicable; request that projects be initiated through the proper agency and serve as the in-house professional depending upon the scope of work; and maintain contact with any project professional involved in a project, beginning with the bid or quote process through initiation and completion of the project;

(iv) To coordinate special state events held at the New Capitol Building or grounds other than those held in the Chambers of the House of Representatives or the Senate;

(v) To serve as a liaison to the Clerk of the House of Representatives, Secretary of the Senate, Department of Finance and Administration, Department of Archives and History and project professionals on all projects at the New Capitol Building or grounds;

(vi) To coordinate with the Capitol Hostess on tours and events for the public held at the New Capitol Building or grounds; and

(vii) To perform such other duties relating to the New Capitol Building or grounds as prescribed by the director of the department.



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 269

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session  
**House Bill 317**

**Description:** Office of Mississippi Physician Workforce; establish within UMMC.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No











*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/13 (H) Referred To Public Health and Human Services; Appropriations
- 2 02/23 (H) DR - TSDP: PH To AP
- 3 03/01 (H) DR - TSDPCS: AP To PH
- 4 03/01 (H) Title Suff Do Pass Comm Sub
- 5 03/13 (H) Committee Substitute Adopted
- 6 03/13 (H) Amended
- 7 03/13 (H) Passed As Amended {Vote}
- 8 03/15 (H) Transmitted To Senate
- 9 03/20 (S) Referred To Public Health and Welfare; Appropriations
- 10 04/03 (S) DR - TSDPAA: PH To AP
- 11 04/03 (S) Title Suff Do Pass As Amended
- 12 04/09 (S) Amended
- 13 04/09 (S) Passed As Amended {Vote}
- 14 04/11 (S) Returned For Concurrence
- 15 04/13 (H) Concurred in Amend From Senate {Vote}
- 16 04/18 (S) Enrolled Bill Signed
- 17 04/18 (H) Enrolled Bill Signed
- 18 04/24 Approved by Governor

**Amendments:**

-   [H] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote
-   [H] Amendment No 2 (Cmte Sub) **Adopted** Voice Vote
-   [S] Committee Amendment No 1 **Adopted** Voice Vote
-   [S] Amendment No 1 to Committee Amendment No 1 **Adopted** Voice Vote
-   Amendment Report for House Bill No. 317

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 317

### ----- Additional Information -----

*House Committee:* Public Health and Human Services, Appropriations

*Senate Committee:* Public Health and Welfare, Appropriations

*Principal Author:* Mims

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 317

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Mims

To: Public Health and Human  
Services; Appropriations

HOUSE BILL NO. 317  
(As Sent to Governor)

AN ACT TO ESTABLISH THE OFFICE OF MISSISSIPPI PHYSICIAN WORKFORCE WITHIN THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER (UMMC) FOR THE PURPOSE OF OVERSEEING THE PHYSICIAN WORKFORCE DEVELOPMENT OF THE STATE OF MISSISSIPPI AND THE ADMINISTRATION OF STATE FINANCIAL SUPPORT TO HOSPITALS OR OTHER ENTITIES FOR THE CREATION OF FAMILY MEDICINE RESIDENCIES IN MISSISSIPPI; TO CREATE THE MISSISSIPPI PHYSICIAN WORKFORCE ADVISORY BOARD TO ADMINISTER THE OFFICE AND ITS ACTIVITIES; TO PROVIDE FOR THE MEMBERSHIP OF THE ADVISORY BOARD AND PRESCRIBE THE POWERS AND DUTIES OF THE ADVISORY BOARD; TO PRESCRIBE THE ELIGIBILITY REQUIREMENTS FOR RECEIVING STATE FINANCIAL SUPPORT FOR THE CREATION OF ACCREDITED FAMILY MEDICINE RESIDENCY PROGRAMS IN THE STATE TO PROVIDE FAMILY PHYSICIANS THROUGHOUT THE STATE; TO AUTHORIZE THE ADVISORY BOARD TO PROVIDE STATE FINANCIAL SUPPORT TO HOSPITALS OR OTHER ENTITIES IN THE CREATION OF ACCREDITED FAMILY MEDICINE RESIDENCY PROGRAMS; TO PROVIDE THAT THE OFFICE OF PHYSICIAN WORKFORCE SHALL ASSESS AND MONITOR THE PHYSICIAN WORKFORCE NEEDS OF THE STATE IN ALL MEDICAL SPECIALTIES AND SEEK WAYS FOR THE STATE TO ADDRESS BOTH CURRENT AND FUTURE WORKFORCE NEEDS; TO PROVIDE THAT THE OFFICE OF PHYSICIAN WORKFORCE SHALL PROVIDE AN ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE ON THE CURRENT STATUS OF PHYSICIAN WORKFORCE AND TRAINING PROGRAMS IN MISSISSIPPI; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** There is established the Office of Mississippi Physician Workforce within the University of Mississippi Medical Center (UMMC) for the purpose of overseeing the physician workforce development and needs, both in numbers and distribution, of the State of Mississippi. The office shall have a director who must be a physician licensed in the State of Mississippi. In addition, the office shall have a researcher to assist the director in collecting and analyzing data concerning the physician workforce needs of Mississippi and other necessary staff to assist in its work. The office shall have the following duties, at a minimum:



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- (a) Assessing the current numbers, ages, types of practice, hospital affiliations, and geographic distribution of physicians in each medical specialty in Mississippi;
- (b) Assessing the current and future physician workforce needs of the State of Mississippi;
- (c) Supporting the creation of Family Medicine residency programs in the State of Mississippi, including the awarding of state financial support for the creation of those programs;
- (d) Encouraging the development of an adequate and geographically distributed physician workforce in all specialties for the State of Mississippi with an evolving strategic plan; and
- (e) Providing an annual report to the Governor, the Legislature, the State Board of Health, and the Board of Trustees of State Institutions of Higher Learning on the current status of the physician workforce and training programs in Mississippi.

**SECTION 2.** (1) The Office of Mississippi Physician Workforce shall be administered by UMMC. An advisory board shall be created to assist UMMC in achieving the purpose of this act to be known as the "Mississippi Physician Workforce Advisory Board." The advisory board shall be composed of the following members:

- (a) The Chairman of the State Board of Health.
- (b) The State Health Officer.
- (c) Two (2) physicians appointed by and from the membership of the Mississippi State Medical Association for a term of three (3) years. Any member appointed under this paragraph may be reappointed for two (2) additional terms.
- (d) Two (2) physicians appointed by and from the membership of the Mississippi Academy of Family Physicians for a term of three (3) years. Any member appointed under this paragraph may be reappointed for two (2) additional terms.
- (e) One (1) physician appointed by and from the membership of each of the following organizations, whose terms

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shall be for three (3) years and who may be reappointed for two (2) additional terms:

- (i) Mississippi Osteopathic Medical Association;
  - (ii) Mississippi Chapter, American College of Physicians;
  - (iii) Mississippi Chapter, American Academy of Pediatrics;
  - (iv) Mississippi Chapter, American College of OB-GYN; and
  - (v) Mississippi Medical and Surgical Association.
- (f) Two (2) physician designees of the Dean of the University of Mississippi School of Medicine, who will serve at the will and pleasure of the dean. One (1) of the members appointed under this paragraph must be responsible for Graduate Medical Education at the University of Mississippi School of Medicine.
- (g) The Chair of the Department of Family Medicine at the University of Mississippi School of Medicine.
- (h) A member of the State Board of Medical Licensure, who will serve at the will and pleasure of that board.
- (i) One (1) physician designee of the Dean of the William Carey School of Medicine, who will serve at the will and pleasure of the dean.
- (j) One (1) representative of the Mississippi Economic Council appointed by the president of the council, and who will serve at the will and pleasure of the president.
- (k) One (1) representative of the Mississippi Development Authority appointed by the executive director of the authority, who will serve at the will and pleasure of the executive director.
- (l) One (1) representative of the Mississippi Hospital Association, who will serve at the will and pleasure of the association.

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(m) Two (2) representatives of the Mississippi Primary Health Care Association, who will serve at the will and pleasure of the association.

(2) Vacancies on the advisory board must be filled in a manner consistent with the original appointments.

(3) All appointments to the advisory board must be made no later than July 10, 2012. After a majority of the members are appointed, the advisory board shall meet on a date mutually agreed upon by a majority of the members for the purposes of organizing the advisory board and establishing rules for transacting its business. A majority of the members of the advisory board shall constitute a quorum at all advisory board meetings. An affirmative vote of a majority of the members present and voting shall be required in the making recommendations by the advisory board. At the organizational meeting, the advisory board shall elect a chair and vice chair from the members appointed according to paragraphs (a) through (1) of subsection (1). The chair shall serve for a term of two (2) years, upon the expiration of which the vice chair shall assume the office of chair.

(4) After the organizational meeting, the advisory board shall hold no less than two (2) meetings annually.

(5) The advisory board may form an executive committee for the purpose of transacting business that must be conducted before the next regularly scheduled meeting of the advisory board. All actions taken by the executive committee must be ratified by the advisory board at its next regularly scheduled meeting.

(6) Members of the advisory board shall serve without compensation, but may be reimbursed, subject to the availability of funding, for mileage and actual and necessary expenses incurred in attending meetings of the advisory board.

(7) The advisory board shall be housed at the University of Mississippi Medical Center.

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**SECTION 3.** The Office of Mississippi Physician Workforce shall have the following powers and duties, at a minimum:

- (a) Developing the administrative policy for the advisory board and the Office of Mississippi Physician Workforce;
- (b) Developing and implementing strategies and activities for the office and for the implementation of an evolving strategic plan to provide for the physician workforce needs of Mississippi. In developing these strategies, the Office of Mississippi Physician Workforce and the advisory board shall seek the input of various organizations and entities including the Mississippi State Medical Association, the Mississippi Academy of Family Physicians, the Mississippi Chapters of the American College of Physicians, American Academy of Pediatrics, and American College of OB-GYN, the Mississippi Medical and Surgical Association, and the Mississippi Osteopathic Medicine Association;
- (c) Establishing a budget to support the activities of the office and periodically reviewing and if appropriate, revising, that budget to meet its mission;
- (d) Selecting, hiring and supervising the Director of the Office of Mississippi Physician Workforce;
- (e) Reviewing the activities of the office and guiding the office in accomplishing the strategic goal of providing Mississippi's physician workforce needs.

**SECTION 4.** (1) The advisory board shall recommend policies and procedures for the awarding of state funding that creates the desired number of accredited Family Medicine residency programs that will accept both M.D. and D.O. students needed in the State of Mississippi.

(2) The UMMC with the input of the advisory board shall have the authority to award financial support, from funds specifically appropriated for that purpose by the Legislature, of up to Three Million Dollars (\$3,000,000.00) distributed over three (3) years to any hospital or entity with demonstrated commitment and



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resources, as determined by UMMC with input from the advisory board, to establish and operate an accredited Family Medicine residency program qualifying under subsection (1) of this section. The funds will be dispersed at the determination of the UMMC, with input from the advisory board, and may include start-up funding for residency programs.

(3) Each applicant for state financial support for creation of a Family Medicine residency program as authorized under this section must submit an application to the UMMC that conforms to requirements established by this act, and UMMC with input from the advisory board.

(4) In selecting recipients for state financial support authorized under this section, the UMMC may use its discretion to award funding based on geographic needs and the future success of a Family Medicine residency program.

(5) An applicant for state financial support for creation of a Family Medicine residency program may receive funding only upon approval of UMMC with input from the advisory board.

**SECTION 5.** (1) Hospitals, other entities and/or residency programs must adhere to the policies and practices as stipulated by the Office of Mississippi Physician Workforce to continue receiving state financial support under this act.

(2) Hospitals, other entities and/or residency programs may receive state financial support that may be provided by the Office of Mississippi Physician Workforce pursuant to this act. Any financial support awarded by the Office of Mississippi Physician Workforce must be used for only the creation of a residency or for residency operational expenses, or the recipient will be liable for repayment of any financial support received under this act.

**SECTION 6.** Any Family Medicine residency program established with state financial support must be capable of accepting students from both medical and osteopathic schools that are accredited by

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 317

the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA).

**SECTION 7.** Funding for the operation of the Office of Mississippi Physician Workforce and the Mississippi Physician Workforce Advisory Board, including the salary of the director of the office and all necessary staff, shall be paid from funds specifically appropriated for that purpose by the Legislature.

**SECTION 8.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

House Bill 353

**Description:** Crimes; create felony offense of knowingly deceiving a firearms dealer regarding firearm purchases.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Judiciary B
- 2 03/01 (H) Title Suff Do Pass
- 3 03/13 (H) Read the Third Time
- 4 03/14 (H) Passed {Vote}
- 5 03/15 (H) Transmitted To Senate
- 6 03/22 (S) Referred To Judiciary, Division B
- 7 04/03 (S) Title Suff Do Pass As Amended
- 8 04/11 (S) Amended
- 9 04/11 (S) Passed As Amended {Vote}
- 10 04/12 (S) Returned For Concurrence
- 11 04/19 (H) Concurred in Amend From Senate {Vote}
- 12 04/24 (H) Enrolled Bill Signed
- 13 04/24 (S) Enrolled Bill Signed
- 14 05/01 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 353

----- Additional Information -----

*House Committee:* Judiciary B

*Senate Committee:* Judiciary, Division B

*Principal Author:* Denny

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 353

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Denny

To: Judiciary B

HOUSE BILL NO. 353  
(As Sent to Governor)

AN ACT TO CREATE THE FELONY OFFENSE OF KNOWINGLY DECEIVING A LICENSED FIREARMS DEALER REGARDING FIREARM PURCHASES; TO PROVIDE PENALTIES FOR VIOLATIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** This act shall be known and may be cited as the "Honesty in Purchasing Firearms Act."

**SECTION 2.** (1) For purposes of this section:

(a) "Licensed dealer" means a person who is licensed pursuant to 18 USCS, Section 923, to engage in the business of dealing in firearms.

(b) "Private seller" means a person who sells or offers for sale any firearm or ammunition.

(c) "Ammunition" means any cartridge, shell or projectile designed for use in a firearm.

(d) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

**SECTION 3.** (1) Any person who knowingly solicits, persuades, encourages or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate the laws of this state or the United States is guilty of a felony.

(2) Any person who provides to a licensed dealer or private seller of firearms or ammunition what the person knows to be materially false information with intent to deceive the dealer or

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seller about the legality of a transfer of a firearm or ammunition is guilty of a felony.

(3) Any person found guilty of violating the provisions of this section shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000.00) or imprisoned in the custody of the Department of Corrections for not more than three (3) years, or both.

(4) This section does not apply to a law enforcement officer acting in the officer's official capacity or to a person acting at the direction of a law enforcement officer.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 371

**Description:** Revocation of offender's earned-release supervision; allow time spent on supervision before revocation be applied to sentence.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/13 (H) Referred To Corrections
- 2 03/02 (H) Title Suff Do Pass
- 3 03/13 (H) Read the Third Time
- 4 03/14 (H) Passed (Vote)
- 5 03/15 (H) Transmitted To Senate
- 6 03/20 (S) Referred To Corrections
- 7 03/27 (S) Title Suff Do Pass As Amended
- 8 04/05 (S) Amended
- 9 04/05 (S) Passed As Amended (Vote)
- 10 04/10 (S) Returned For Concurrence
- 11 04/17 (H) Concurred in Amend From Senate (Vote)
- 12 04/19 (H) Enrolled Bill Signed
- 13 04/19 (S) Enrolled Bill Signed
- 14 04/26 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  [S] Amendment No 2 **Lost** Voice Vote

  Amendment Report for House Bill No. 371

**Code Section:** A 047-0005-0138

----- Additional Information -----

**2012 GENERAL LAWS OF MISSISSIPPI, HB 371**

*House Committee:* Corrections

*Senate Committee:* Corrections

*Principal Author:* Flaggs

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 371

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Flaggs

To: Corrections

HOUSE BILL NO. 371  
(As Sent to Governor)

AN ACT TO AMEND SECTION 47-5-138, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF THE EARNED-RELEASE SUPERVISION OF AN OFFENDER IS REVOKED, THE TIME THE INMATE WAS ON EARNED-RELEASE SUPERVISION UNTIL THE REVOCATION SHALL BE APPLIED TO THE REDUCTION OF SUCH OFFENDER'S SENTENCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 47-5-138, Mississippi Code of 1972, is amended as follows:

47-5-138. (1) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half (1/2) of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence. This subsection does not apply to any sentence imposed after June 30, 1995.

(2) An inmate may forfeit all or part of his earned time allowance for a serious violation of rules. No forfeiture of the earned time allowance shall be effective except upon approval of the commissioner or his designee, and forfeited earned time may not be restored.

(3) (a) For the purposes of this subsection, "final order" means an order of a state or federal court that dismisses a lawsuit brought by an inmate while the inmate was in the custody of the Department of Corrections as frivolous, malicious or for failure to state a claim upon which relief could be granted.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 371

(b) On receipt of a final order, the department shall forfeit:

(i) Sixty (60) days of an inmate's accrued earned time if the department has received one (1) final order as defined herein;

(ii) One hundred twenty (120) days of an inmate's accrued earned time if the department has received two (2) final orders as defined herein;

(iii) One hundred eighty (180) days of an inmate's accrued earned time if the department has received three (3) or more final orders as defined herein.

(c) The department may not restore earned time forfeited under this subsection.

(4) An inmate who meets the good conduct and performance requirements of the earned time allowance program may be released on his conditional earned time release date.

(5) For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half (4-1/2) days for each thirty (30) days served if the department determines that the inmate has complied with the good conduct and performance requirements of the earned time allowance program. The earned time allowance under this subsection shall not exceed fifteen percent (15%) of an inmate's term of sentence; however, beginning July 1, 2006, no person under the age of twenty-one (21) who has committed a nonviolent offense, and who is under the jurisdiction of the Department of Corrections, shall be subject to the fifteen percent (15%) limitation for earned time allowances as described in this subsection (5).

(6) Any inmate, who is released before the expiration of his term of sentence under this section, shall be placed under earned-release supervision until the expiration of the term of sentence. The inmate shall retain inmate status and remain under the jurisdiction of the department. The period of earned-release

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 371

supervision shall be conducted in the same manner as a period of supervised parole. The department shall develop rules, terms and conditions for the earned-release supervision program. The commissioner shall designate the appropriate hearing officer within the department to conduct revocation hearings for inmates violating the conditions of earned-release supervision.

*(7) If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence, but the time the inmate served on earned-release supervision before revocation, shall \* \* \* be applied to \* \* \* reduce his sentence.*

**SECTION 2.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

House Bill 372

**Description:** Parole; time served on a parole before revocation to be credited toward offender's original sentence.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No





*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/13 (H) Referred To Corrections
- 2 02/27 (H) Title Suff Do Pass
- 3 03/13 (H) Passed {Vote}
- 4 03/14 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Corrections
- 6 03/27 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/17 (H) Concurred in Amend From Senate {Vote}
- 11 04/19 (H) Enrolled Bill Signed
- 12 04/19 (S) Enrolled Bill Signed
- 13 04/26 Approved by Governor

**Amendments:**

-   [S] Committee Amendment No 1 **Adopted** Voice Vote
-   [S] Amendment No 1 to Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 372

**Code Section:** A 047-0007-0027

----- Additional Information -----

**House Committee:** Corrections

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 372

*Senate Committee:* Corrections

*Principal Author:* Flaggs

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 372

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Flaggs

To: Corrections

HOUSE BILL NO. 372  
(As Sent to Governor)

AN ACT TO AMEND SECTION 47-7-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PERIOD OF TIME SERVED BY AN OFFENDER ON PAROLE PRIOR TO REVOCATION SHALL BE CREDITED TOWARD THE ORIGINAL SENTENCE IMPOSED BY A TRIAL COURT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 47-7-27, Mississippi Code of 1972, is amended as follows:

47-7-27. (1) The board may, at any time \* \* \* and upon a showing of probable violation of parole, \* \* \* issue a warrant for the return of any paroled offender to the custody of the \* \* \* department \* \* \*. The warrant shall authorize all persons named therein to return the paroled offender to actual custody of the department \* \* \* from which he was paroled. Pending a hearing \* \* \* upon any charge of parole violation, the offender shall remain incarcerated in any \* \* \* place of detention designated by the department.

(2) Any field supervisor may arrest an offender without a warrant or may deputize any other person with power of arrest \* \* \* by giving him a written statement setting forth that the offender has, in the judgment of that field supervisor, violated the conditions of his parole or earned-release supervision. The written statement delivered with the offender by the arresting officer to the official in charge of the department facility from which the offender was released or other place of detention designated by the department shall be sufficient warrant for the detention of the offender.

(3) The field supervisor, after making an arrest, shall present to the detaining authorities a similar statement of the

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 372

circumstances of violation. The field supervisor shall at once notify the board or department of the arrest and detention of the offender and shall submit a written report showing in what manner the offender has violated the conditions of parole or earned-release supervision. An offender for whose return a warrant has been issued by the board shall, after the issuance of the warrant, be deemed a fugitive from justice.

(4) The \* \* \* right of the State of Mississippi to extradite persons and return fugitives from justice, from other states to this state, shall not be impaired by this chapter and shall remain in full force and effect. An offender convicted of a felony committed while on parole, whether in the State of Mississippi or another state, shall immediately have his parole revoked upon presentment of a certified copy of the commitment order to the board. If an offender is on parole and the offender is convicted of a felony for a crime committed prior to the offender being placed on parole, whether in the State of Mississippi or another state, the offender may have his parole revoked upon presentment of a certified copy of the commitment order to the board.

(5) At the next meeting of the board \* \* \* after the issuance of a warrant for the return of an offender, \* \* \* if the offender has been taken into custody, he shall \* \* \* be given an opportunity to appeal to the board in writing or in person why his parole should not be revoked. The board may then, or at any time in its discretion, terminate the parole or modify the terms and conditions thereof. If the board \* \* \* revokes parole, the offender shall serve the remainder of the sentence originally imposed, but the time served on parole before revocation shall be credited toward the offender's sentence. \* \* \* The board may grant the offender a second parole. If a second parole shall not be granted, then the offender shall serve the remainder of the

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sentence originally imposed, but the time served on parole before revocation shall \* \* \* be credited toward the offender's sentence \* \* \*.

(6) The chairman and each member of the board and the designated parole revocation hearing officer may, in the discharge of their duties, \* \* \* administer oaths, \* \* \* summon and examine witnesses, and take other steps as may be necessary to ascertain the truth of any matter about which they \* \* \* have the right to inquire.

**SECTION 2.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

House Bill 423

**Description:** Prescription drugs; drug task forces shall collect from residential sources for disposal by Narcotics Bureau.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Public Health and Human Services
- 2 02/23 (H) Title Suff Do Pass
- 3 03/08 (H) Passed {Vote}
- 4 03/09 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Drug Policy
- 6 03/28 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/13 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (S) Enrolled Bill Signed
- 12 04/18 (H) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 423

----- Additional Information -----

*House Committee:* Public Health and Human Services

*Senate Committee:* Drug Policy

*Principal Author:* Mims

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 423

*Additional Authors:* Myers

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 423

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Mims, Myers

To: Public Health and Human  
Services

HOUSE BILL NO. 423  
(As Sent to Governor)

AN ACT TO PROVIDE THAT DRUG TASK FORCES SHALL REGULARLY COLLECT PRESCRIPTION PILLS AND DRUGS BROUGHT FROM RESIDENTIAL SOURCES AND TRANSPORT THE PILLS AND DRUGS TO THE INCINERATOR MAINTAINED BY THE MISSISSIPPI BUREAU OF NARCOTICS FOR DISPOSAL; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** On the first Monday of each month, each drug task force may collect prescription pills and drugs that are brought to the main office of the task force from residential sources, and shall transport the collected pills and drugs to the incinerator maintained by the Mississippi Bureau of Narcotics for disposal. For the purposes of this section, the term "drug task force" means a drug or narcotics task force or enforcement team created through an interlocal cooperation agreement under Section 17-13-1 et seq.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 447

**Description:** School superintendents; require school board to conduct an annual comprehensive evaluation of.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Education
- 2 03/02 (H) Title Suff Do Pass
- 3 03/13 (H) Read the Third Time
- 4 03/14 (H) Tabled Subject To Call
- 5 03/15 (H) Passed *{Vote}*
- 6 03/16 (H) Transmitted To Senate
- 7 03/22 (S) Referred To Education
- 8 04/03 (S) Title Suff Do Pass As Amended
- 9 04/04 (S) Amended
- 10 04/04 (S) Passed As Amended *{Vote}*
- 11 04/05 (S) Returned For Concurrence
- 12 04/13 (H) Concurred in Amend From Senate *{Vote}*
- 13 04/19 (H) Enrolled Bill Signed
- 14 04/19 (S) Enrolled Bill Signed
- 15 04/26 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *Voice Vote*

  Amendment Report for House Bill No. 447

**Code Section:** A 037-0007-0301

----- Additional Information -----

**House Committee:** Education

**2012 GENERAL LAWS OF MISSISSIPPI, HB 447**

***Senate Committee:*** Education

***Principal Author:*** Broomfield



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 447

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Broomfield

To: Education

HOUSE BILL NO. 447  
(As Sent to Governor)

AN ACT TO AMEND SECTION 37-7-301, MISSISSIPPI CODE OF 1972, TO REQUIRE THE LOCAL SCHOOL BOARD TO CONDUCT AN ANNUAL COMPREHENSIVE EVALUATION OF THE SCHOOL SUPERINTENDENT CONSISTENT WITH THE ASSESSMENT COMPONENTS ESTABLISHED BY LAW AND THE ASSESSMENT BENCHMARKS ESTABLISHED BY THE MISSISSIPPI SCHOOL BOARD ASSOCIATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-7-301, Mississippi Code of 1972, is amended as follows:

37-7-301. The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:

(a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school;

(b) To introduce public school music, art, manual training and other special subjects into either the elementary or high school grades, as the board shall deem proper;

(c) To be the custodians of real and personal school property and to manage, control and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or homebound program for misconduct in the school or on school

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 447

property, as defined in Section 37-11-29, on the road to and from school, or at any school-related activity or event, or for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district;

(f) To visit schools in the district, in their discretion, in a body for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To support, within reasonable limits, the superintendent, principal and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools students with what appears to be infectious or contagious diseases; provided, however, such student may be allowed to return to school upon presenting a certificate from a public health officer, duly licensed physician or nurse practitioner that the student is free from such disease;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37;

(j) To see that all necessary utilities and services are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board of Education for their own government and for the government of

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the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To make orders directed to the superintendent of schools for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise. The local school board shall be authorized and empowered to promulgate rules and regulations that specify the types of claims and set limits of the dollar amount for payment of claims by the superintendent of schools to be ratified by the board at the next regularly scheduled meeting after payment has been made;

(p) To select all school district personnel in the manner provided by law, and to provide for such employee fringe benefit programs, including accident reimbursement plans, as may be deemed necessary and appropriate by the board;

(q) To provide athletic programs and other school activities and to regulate the establishment and operation of such programs and activities;

(r) To join, in their discretion, any association of school boards and other public school-related organizations, and to pay from local funds other than minimum foundation funds, any membership dues;

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph.

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"Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless commingled in a bank account with existing activity funds, regardless of whether the funds were raised by school employees or received by school employees during school hours or using school facilities, and regardless of whether a school employee exercises influence over the expenditure or disposition of such funds. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperons in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in its discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (i) that such school activity funds shall be



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maintained and expended by the principal of the school generating the funds in individual bank accounts, or (ii) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide that such school activity funds be audited as part of the annual audit required in Section 37-9-18. The State Department of Education shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions;

(t) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years;

(u) To maintain accounts and issue pay certificates on school food service bank accounts;

(v) (i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any nonminimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If



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at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election be called on the question, then the school board shall, not later than the next regular meeting, adopt a resolution calling an election to be held within such school district upon the question of authorizing the school board to lease a school building. Such election shall be called and held, and notice thereof shall be given, in the same manner for elections upon the questions of the issuance of the bonds of school districts, and the results thereof shall be certified to the school board. If at least three-fifths (3/5) of the qualified electors of the school district who voted in such election shall vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. The term of the lease contract shall not exceed twenty (20) years, and the total cost of such lease shall be either the amount of the lowest and best bid accepted by the school board after advertisement for bids or an amount not to exceed the current fair market value of the lease as determined by the averaging of at least two (2) appraisals by certified general appraisers licensed by the State of Mississippi. The term "school building" as used in this paragraph (v)(i) shall be construed to mean any building or buildings used for classroom purposes in connection with the operation of schools and shall include the site therefor, necessary support facilities, and the equipment thereof and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives and playgrounds. The term "lease" as used in this paragraph (v)(i) may include a lease/purchase contract;

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school boards having control may be held but no action taken shall

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be binding on any such school district unless the question of leasing a school building is approved in each participating school district under the procedure hereinabove set forth in paragraph (v) (i). All of the provisions of paragraph (v) (i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each;

(w) To employ all noninstructional and nonlicensed employees and fix the duties and compensation of such personnel deemed necessary pursuant to the recommendation of the superintendent of schools;

(x) To employ and fix the duties and compensation of such legal counsel as deemed necessary;

(y) Subject to rules and regulations of the State Board of Education, to purchase, own and operate trucks, vans and other motor vehicles, which shall bear the proper identification required by law;

(z) To expend funds for the payment of substitute teachers and to adopt reasonable regulations for the employment and compensation of such substitute teachers;

(aa) To acquire in its own name by purchase all real property which shall be necessary and desirable in connection with the construction, renovation or improvement of any public school building or structure. Whenever the purchase price for such real property is greater than Fifty Thousand Dollars (\$50,000.00), the school board shall not purchase the property for an amount exceeding the fair market value of such property as determined by

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the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi. If the board shall be unable to agree with the owner of any such real property in connection with any such project, the board shall have the power and authority to acquire any such real property by condemnation proceedings pursuant to Section 11-27-1 et seq., Mississippi Code of 1972, and for such purpose, the right of eminent domain is hereby conferred upon and vested in said board. Provided further, that the local school board is authorized to grant an easement for ingress and egress over sixteenth section land or lieu land in exchange for a similar easement upon adjoining land where the exchange of easements affords substantial benefit to the sixteenth section land; provided, however, the exchange must be based upon values as determined by a competent appraiser, with any differential in value to be adjusted by cash payment. Any easement rights granted over sixteenth section land under such authority shall terminate when the easement ceases to be used for its stated purpose. No sixteenth section or lieu land which is subject to an existing lease shall be burdened by any such easement except by consent of the lessee or unless the school district shall acquire the unexpired leasehold interest affected by the easement;

(bb) To charge reasonable fees related to the educational programs of the district, in the manner prescribed in Section 37-7-335;

(cc) Subject to rules and regulations of the State Board of Education, to purchase relocatable classrooms for the use of such school district, in the manner prescribed in Section 37-1-13;

(dd) Enter into contracts or agreements with other school districts, political subdivisions or governmental entities to carry out one or more of the powers or duties of the school

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board, or to allow more efficient utilization of limited resources for providing services to the public;

(ee) To provide for in-service training for employees of the district;

(ff) As part of their duties to prescribe the use of textbooks, to provide that parents and legal guardians shall be responsible for the textbooks and for the compensation to the school district for any books which are not returned to the proper schools upon the withdrawal of their dependent child. If a textbook is lost or not returned by any student who drops out of the public school district, the parent or legal guardian shall also compensate the school district for the fair market value of the textbooks;

(gg) To conduct fund-raising activities on behalf of the school district that the local school board, in its discretion, deems appropriate or beneficial to the official or extracurricular programs of the district; provided that:

(i) Any proceeds of the fund-raising activities shall be treated as "activity funds" and shall be accounted for as are other activity funds under this section; and

(ii) Fund-raising activities conducted or authorized by the board for the sale of school pictures, the rental of caps and gowns or the sale of graduation invitations for which the school board receives a commission, rebate or fee shall contain a disclosure statement advising that a portion of the proceeds of the sales or rentals shall be contributed to the student activity fund;

(hh) To allow individual lessons for music, art and other curriculum-related activities for academic credit or nonacademic credit during school hours and using school equipment and facilities, subject to uniform rules and regulations adopted by the school board;



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(ii) To charge reasonable fees for participating in an extracurricular activity for academic or nonacademic credit for necessary and required equipment such as safety equipment, band instruments and uniforms;

(jj) To conduct or participate in any fund-raising activities on behalf of or in connection with a tax-exempt charitable organization;

(kk) To exercise such powers as may be reasonably necessary to carry out the provisions of this section;

(ll) To expend funds for the services of nonprofit arts organizations or other such nonprofit organizations who provide performances or other services for the students of the school district;

(mm) To expend federal No Child Left Behind Act funds, or any other available funds that are expressly designated and authorized for that use, to pay training, educational expenses, salary incentives and salary supplements to employees of local school districts; except that incentives shall not be considered part of the local supplement as defined in Section 37-151-5(o), nor shall incentives be considered part of the local supplement paid to an individual teacher for the purposes of Section 37-19-7(1). Mississippi Adequate Education Program funds or any other state funds may not be used for salary incentives or salary supplements as provided in this paragraph (mm);

(nn) To use any available funds, not appropriated or designated for any other purpose, for reimbursement to the state-licensed employees from both in state and out of state, who enter into a contract for employment in a school district, for the expense of moving when the employment necessitates the relocation of the licensed employee to a different geographical area than that in which the licensed employee resides before entering into the contract. The reimbursement shall not exceed One Thousand Dollars (\$1,000.00) for the documented actual expenses incurred in



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the course of relocating, including the expense of any professional moving company or persons employed to assist with the move, rented moving vehicles or equipment, mileage in the amount authorized for county and municipal employees under Section 25-3-41 if the licensed employee used his personal vehicle or vehicles for the move, meals and such other expenses associated with the relocation. No licensed employee may be reimbursed for moving expenses under this section on more than one (1) occasion by the same school district. Nothing in this section shall be construed to require the actual residence to which the licensed employee relocates to be within the boundaries of the school district that has executed a contract for employment in order for the licensed employee to be eligible for reimbursement for the moving expenses. However, the licensed employee must relocate within the boundaries of the State of Mississippi. Any individual receiving relocation assistance through the Critical Teacher Shortage Act as provided in Section 37-159-5 shall not be eligible to receive additional relocation funds as authorized in this paragraph;

(oo) To use any available funds, not appropriated or designated for any other purpose, to reimburse persons who interview for employment as a licensed employee with the district for the mileage and other actual expenses incurred in the course of travel to and from the interview at the rate authorized for county and municipal employees under Section 25-3-41;

(pp) Consistent with the report of the Task Force to Conduct a Best Financial Management Practices Review, to improve school district management and use of resources and identify cost savings as established in Section 8 of Chapter 610, Laws of 2002, local school boards are encouraged to conduct independent reviews of the management and efficiency of schools and school districts. Such management and efficiency reviews shall provide state and local officials and the public with the following:

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- (i) An assessment of a school district's governance and organizational structure;
- (ii) An assessment of the school district's financial and personnel management;
- (iii) An assessment of revenue levels and sources;
- (iv) An assessment of facilities utilization, planning and maintenance;
- (v) An assessment of food services, transportation and safety/security systems;
- (vi) An assessment of instructional and administrative technology;
- (vii) A review of the instructional management and the efficiency and effectiveness of existing instructional programs; and
- (viii) Recommended methods for increasing efficiency and effectiveness in providing educational services to the public;
- (qq) To enter into agreements with other local school boards for the establishment of an educational service agency (ESA) to provide for the cooperative needs of the region in which the school district is located, as provided in Section 37-7-345;
- (rr) To implement a financial literacy program for students in Grades 10 and 11. The board may review the national programs and obtain free literature from various nationally recognized programs. After review of the different programs, the board may certify a program that is most appropriate for the school districts' needs. If a district implements a financial literacy program, then any student in Grade 10 or 11 may participate in the program. The financial literacy program shall include, but is not limited to, instruction in the same areas of personal business and finance as required under Section 37-1-3(2)(b). The school board may coordinate with volunteer teachers from local community organizations, including, but not

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limited to, the following: United States Department of Agriculture Rural Development, United States Department of Housing and Urban Development, Junior Achievement, bankers and other nonprofit organizations. Nothing in this paragraph shall be construed as to require school boards to implement a financial literacy program;

(ss) To collaborate with the State Board of Education, Community Action Agencies or the Department of Human Services to develop and implement a voluntary program to provide services for a prekindergarten program that addresses the cognitive, social, and emotional needs of four-year-old and three-year-old children. The school board may utilize any source of available revenue to fund the voluntary program;

(tt) With respect to any lawful, written obligation of a school district, including, but not limited to, leases (excluding leases of sixteenth section public school trust land), bonds, notes, or other agreement, to agree in writing with the obligee that the Department of Revenue or any state agency, department or commission created under state law may:

(i) Withhold all or any part (as agreed by the school board) of any monies which such local school board is entitled to receive from time to time under any law and which is in the possession of the Department of Revenue, or any state agency, department or commission created under state law; and

(ii) Pay the same over to any financial institution, trustee or other obligee, as directed in writing by the school board, to satisfy all or part of such obligation of the school district.

The school board may make such written agreement to withhold and transfer funds irrevocable for the term of the written obligation and may include in the written agreement any other terms and provisions acceptable to the school board. If the school board files a copy of such written agreement with the

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Department of Revenue, or any state agency, department or commission created under state law then the Department of Revenue or any state agency, department or commission created under state law shall immediately make the withholdings provided in such agreement from the amounts due the local school board and shall continue to pay the same over to such financial institution, trustee or obligee for the term of the agreement.

This paragraph (tt) shall not grant any extra authority to a school board to issue debt in any amount exceeding statutory limitations on assessed value of taxable property within such school district or the statutory limitations on debt maturities, and shall not grant any extra authority to impose, levy or collect a tax which is not otherwise expressly provided for, and shall not be construed to apply to sixteenth section public school trust land;

(uu) With respect to any matter or transaction that is competitively bid by a school district, to accept from any bidder as a good faith deposit or bid bond or bid surety, the same type of good faith deposit or bid bond or bid surety that may be accepted by the state or any other political subdivision on similar competitively bid matters or transactions. This paragraph (uu) shall not be construed to apply to sixteenth section public school trust land. The school board may authorize the investment of any school district funds in the same kind and manner of investments, including pooled investments, as any other political subdivision, including community hospitals;

(vv) To utilize the alternate method for the conveyance or exchange of unused school buildings and/or land, reserving a partial or other undivided interest in the property, as specifically authorized and provided in Section 37-7-485, Mississippi Code of 1972;

(ww) To delegate, privatize or otherwise enter into a contract with private entities for the operation of any and all



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functions of nonacademic school process, procedures and operations including, but not limited to, cafeteria workers, janitorial services, transportation, professional development, achievement and instructional consulting services materials and products, purchasing cooperatives, insurance, business manager services, auditing and accounting services, school safety/risk prevention, data processing and student records, and other staff services; however, the authority under this paragraph does not apply to the leasing, management or operation of sixteenth section lands. Local school districts, working through their regional education service agency, are encouraged to enter into buying consortia with other member districts for the purposes of more efficient use of state resources as described in Section 37-7-345;

(xx) To partner with entities, organizations and corporations for the purpose of benefiting the school district;

(yy) To borrow funds from the Rural Economic Development Authority for the maintenance of school buildings; \* \* \*

(zz) To fund and operate voluntary early childhood education programs, defined as programs for children less than five (5) years of age on or before September 1, and to use any source of revenue for such early childhood education programs. Such programs shall not conflict with the Early Learning Collaborative Act of 2007; and

(aaa) To conduct an annual comprehensive evaluation of the superintendent of schools consistent with the assessment components of paragraph (pp) of this section and the assessment benchmarks established by the Mississippi School Board Association to evaluate the success the superintendent has attained in meeting district goals and objectives, the superintendent's leadership skills and whether or not the superintendent has established appropriate standards for performance, is monitoring success and is using data for improvement.



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**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 448

**Description:** Municipal public meetings; clarify how a quorum may be established.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* VRA

**History of Actions:**

- 1 02/13 (H) Referred To Municipalities
- 2 02/28 (H) Title Suff Do Pass Comm Sub
- 3 03/08 (H) Committee Substitute Adopted
- 4 03/08 (H) Passed {Vote}
- 5 03/09 (H) Transmitted To Senate
- 6 03/16 (S) Referred To Municipalities
- 7 03/23 (S) Title Suff Do Pass As Amended
- 8 04/04 (S) Amended
- 9 04/04 (S) Passed As Amended {Vote}
- 10 04/05 (S) Returned For Concurrence
- 11 04/09 (H) Concurred in Amend From Senate {Vote}
- 12 04/12 (S) Enrolled Bill Signed
- 13 04/12 (H) Enrolled Bill Signed
- 14 04/19 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *Voice Vote*

  Amendment Report for House Bill No. 448

**Code Section:** A 025-0041-0005, A 021-0003-0019, A 021-0005-0013, A 021-0007-0009, A 021-0008-0011, A 021-0009-0039

----- Additional Information -----

**House Committee:** Municipalities

**2012 GENERAL LAWS OF MISSISSIPPI, HB 448**

*Senate Committee:* Municipalities

*Principal Author:* Blackmon

*Additional Authors:* Coleman (29th)

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 448

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Blackmon, Coleman (29th) To: Municipalities

HOUSE BILL NO. 448  
(As Sent to Governor)

AN ACT TO AMEND SECTION 25-41-5, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT A PUBLIC BODY MAY ESTABLISH A QUORUM OF SUCH PUBLIC BODY BY USE OF TELECONFERENCE OR VIDEO MEANS BY THE MEMBERS OF THE PUBLIC BODY WHO ARE ON ACTIVE DUTY IN THE UNITED STATES ARMED FORCES; TO AMEND SECTIONS 21-3-19, 21-5-13, 21-7-9, 21-8-11 AND 21-9-39, MISSISSIPPI CODE OF 1972, TO CONFORM THE MUNICIPAL MEETINGS LAW TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 25-41-5, Mississippi Code of 1972, is amended as follows:

25-41-5. (1) All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in Section 25-41-7.

(2) (a) A public body may conduct any meeting through teleconference or video means. A quorum of a public body as prescribed by law may be at different locations for the purpose of conducting a meeting through teleconference or video means provided participation is available to the general public at one or more public locations specified in the public meeting notice.

(b) A municipal public body may establish a quorum with the members of such public body who are on active duty in any branch of the United States Armed Forces by using any teleconference or video device that allows such members of the municipal public body to clearly communicate with each other and clearly view each other for the purpose of conducting a meeting, voting on issues of the municipal public body and transacting

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business of the municipal public body provided that such participation is available to the general public at one or more public locations specified in the public meeting notice.

(3) (a) Notice of any meetings held pursuant to subsection (2) of this section shall be provided at least five (5) days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify all locations for the meeting available to the general public. All persons attending the meeting at any of the public meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the teleconference or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

(b) Five-day notice shall not be required for teleconference or video meetings continued to address an emergency as provided in subsection (5) of this section or to conclude the agenda of a teleconference or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

(4) An agenda and materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by teleconference or video means shall be recorded as required by Section 25-41-11. Votes taken during any meeting conducted through teleconference or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a teleconference medium is used, or an audio/visual recording, if the meeting is held by video means.



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The recording shall be preserved by the public body for a period of three (3) years following the date of the meeting and shall be available to the public.

(5) A public body may meet by teleconference or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. Public bodies conducting emergency meetings through teleconference or video means shall comply with the provisions of subsection (4) of this section requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The nature of the emergency shall be stated in the minutes.

**SECTION 2.** Section 21-3-19, Mississippi Code of 1972, is amended as follows:

21-3-19. (1) The mayor and board of aldermen shall hold regular meetings the first Tuesday of each month at such place and hour as may be fixed by ordinance, and may, on a date fixed by ordinance, hold a second regular meeting in each month at the same place established for the first regular meeting provided said second meeting shall be held at a day and hour fixed by said ordinance which shall be not less than two (2) weeks from the first day of the first regular meeting and not more than three (3) weeks from the date thereof. When a regular meeting of the mayor and board of aldermen shall fall upon a holiday, the mayor and board shall meet the following day. The mayor and board may recess either meeting from time to time to convene on a day fixed by an order of the mayor and board entered on its minutes, and may transact any business coming before it for consideration. In all cases it shall require a majority of all aldermen to constitute a quorum for the transaction of business. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b).

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(2) The mayor and board of aldermen may, pursuant to Section 21-17-17, Mississippi Code of 1972, set a day other than Tuesday for the holding of their regular monthly meeting.

**SECTION 3.** Section 21-5-13, Mississippi Code of 1972, is amended as follows:

21-5-13. (1) Regular public meetings of the council shall be held on the first day of July after the election of the mayor and councilmen (or commissioners) that is not on a weekend, and thereafter at least twice each month, at such time as the council may by resolution provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day.

Special meetings may be called at any time by the mayor or by two (2) councilmen. At any and all meetings of the council, a majority of all the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided for in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Monday for the holding of its regular bimonthly meeting.

**SECTION 4.** Section 21-7-9, Mississippi Code of 1972, is amended as follows:

21-7-9. (1) Regular public meetings of the council shall be held on the first Tuesday after the first Monday in January after

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the election of the members of the council and monthly thereafter on the first Tuesday in each month. When a regular meeting of the council shall fall upon a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or by three (3) members of the council. At any and all meetings of the council, five (5) members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2) (b). The affirmative vote of a majority of the members of the quorum at any meeting shall be necessary to adopt any motion, resolution, or ordinance or to pass any measure whatever unless otherwise provided in this chapter. Upon every vote taken by the council the yeas and nays shall be called and recorded and every motion, resolution, or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

**SECTION 5.** Section 21-8-11, Mississippi Code of 1972, is amended as follows:

21-8-11. (1) During the first council meeting of a new council, the council shall elect one (1) member as president of the council and one (1) of its other members as vice president, both of whom shall serve at the pleasure of the council. The president shall preside at all council meetings. In the event of the president's absence or disability, the vice president shall act as president. In the event of the absence of the president and vice president, a presiding officer shall be designated by majority vote of the council to serve during such meeting. All councilmen, including the president, shall have the right to vote in the council at all times, even when serving as acting mayor.

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(2) Regular public meetings of the council shall be held on the first Tuesday after the first day of July after the election of the members of the council that is not on a weekend and at least monthly thereafter on the first Tuesday after the first Monday in each month, or at such other times as the council by order may set. Special meetings may be called at any time by the mayor or a majority of the members of the council. At any and all meetings of the council, a majority of the members thereof shall constitute a quorum and the affirmative vote of a majority of the quorum at any meeting shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever unless otherwise provided in this chapter. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). Upon every vote taken by the council, the yeas and nays shall be recorded and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(3) No councilman shall be a member of any commission or board appointed or designated herein, or serve as a member of any commission or board under their jurisdiction except as otherwise provided by law.

**SECTION 6.** Section 21-9-39, Mississippi Code of 1972, is amended as follows:

21-9-39. (1) Regular public meetings of the council shall be held on the first Tuesday of each month, at such time of day as the council may provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or two (2) councilmen on at least two (2) days' notice to the mayor and each member of the council. A special meeting may also be held at any time by written consent of the mayor and all members of the



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council. At all meetings of the council, a majority of the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of all of the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon. The city or town manager may be appointed only at a regular meeting of the council with no less than a majority of the members, plus one (1), in attendance.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

**SECTION 7.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 8.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.



Mississippi Legislature  
2012 Regular Session

House Bill 515

**Description:** County board of supervisors; authorize to adopt an order, resolution or ordinance for a specific area of the county.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To County Affairs
- 2 03/06 (H) Title Suff Do Pass
- 3 03/13 (H) Read the Third Time
- 4 03/15 (H) Passed (Vote)
- 5 03/16 (H) Transmitted To Senate
- 6 03/22 (S) Referred To County Affairs
- 7 03/29 (S) Title Suff Do Pass As Amended
- 8 04/04 (S) Amended
- 9 04/04 (S) Passed As Amended (Vote)
- 10 04/09 (S) Returned For Concurrence
- 11 04/10 (H) Decline to Concur/Invite Conf
- 12 04/11 (H) Motion to Reconsider Entered (Shows)
- 13 04/11 (H) Reconsidered
- 14 04/11 (H) Concurred in Amend From Senate (Vote)
- 15 04/17 (H) Enrolled Bill Signed
- 16 04/17 (S) Enrolled Bill Signed
- 17 04/23 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *Voice Vote*

  [S] Amendment No 1 to Committee Amendment No 1 **Adopted** *Voice Vote*

  Amendment Report for House Bill No. 515

**Code Section:** A 019-0003-0040

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 515

### ----- Additional Information -----

*House Committee:* County Affairs

*Senate Committee:* County Affairs

*Principal Author:* Baker

*Additional Authors:* Rogers (61st), Weathersby, Gipson

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 515

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Baker, Rogers (61st),  
Weathersby, Gipson

To: County Affairs

HOUSE BILL NO. 515  
(As Sent to Governor)

AN ACT TO AMEND SECTION 19-3-40, MISSISSIPPI CODE OF 1972, TO CLARIFY THE AUTHORITY OF A COUNTY BOARD OF SUPERVISORS TO ADOPT AN ORDER, RESOLUTION OR ORDINANCE THAT APPLIES TO A SPECIFIC PART OF THE COUNTY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 19-3-40, Mississippi Code of 1972, is amended as follows:

19-3-40. (1) The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and any such board shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsections (2) and (3) of this section, the powers granted to boards of supervisors in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

Except as provided in subsection (2) of this section, such orders, resolutions or ordinances shall apply countywide unless the governing authorities of any municipality situated within a county adopt any order, resolution or ordinance governing the same general subject matter. In such case the municipal order, resolution or ordinance shall govern within the corporate limits of the municipality.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 515

(2) In any county where U.S. Interstate 20 and U.S. Highway 49 intersect, having a population of greater than one hundred forty-one thousand (141,000) but less than one hundred fifty-one thousand (151,000) according to the 2010 federal decennial census, the board of supervisors may adopt orders, resolutions and ordinances under subsection (1) of this section for a clearly defined geographic area. The order, resolution or ordinance shall describe the affected geographic area by zoning district, section lines or other discernable boundaries. The order, resolution or ordinance also shall state specific findings to support its purpose and need within the geographic area.

(3) This section shall not authorize the board of supervisors of a county to (a) levy taxes other than those authorized by statute or increase the levy of any authorized tax beyond statutorily established limits, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for county elections or establish any new elective office, (d) use any public funds, equipment, supplies or materials for any private purpose, (e) regulate common carrier railroads, (f) grant any donation, or (g) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the county does not have a property interest; unless such actions are specifically authorized by another statute or law of the State of Mississippi.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 522

**Description:** Regimented inmate discipline program at Walnut Grove Correctional Facility; repeal section of law on.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Corrections
- 2 02/27 (H) Title Suff Do Pass
- 3 03/08 (H) Passed {Vote}
- 4 03/09 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Corrections
- 6 03/27 (S) Title Suff Do Pass
- 7 04/05 (S) Passed {Vote}
- 8 04/09 (S) Transmitted To House
- 9 04/12 (S) Enrolled Bill Signed
- 10 04/12 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** RP 047-0005-0947

---- Additional Information ----

*House Committee:* Corrections

*Senate Committee:* Corrections

*Principal Author:* Flaggs



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 522

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Flaggs

To: Corrections

HOUSE BILL NO. 522

AN ACT TO REPEAL SECTION 47-5-947, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE IMPLEMENTATION OF THE REGIMENTED INMATE DISCIPLINE PROGRAM AT THE WALNUT GROVE CORRECTIONAL FACILITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 47-5-947, Mississippi Code of 1972, which provides for the implementation of the regimented inmate discipline program at the Walnut Grove Correctional Facility, is repealed.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 523

**Description:** Walnut Grove Correctional Facility; authorize any state offender to be housed at.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/13 (H) Referred To Corrections
- 2 02/27 (H) Title Suff Do Pass Comm Sub
- 3 03/08 (H) Committee Substitute Adopted
- 4 03/08 (H) Passed {Vote}
- 5 03/09 (H) Transmitted To Senate
- 6 03/16 (S) Referred To Corrections; Appropriations
- 7 03/27 (S) DR - TSDPAA: CR To AP
- 8 04/03 (S) Title Suff Do Pass As Amended
- 9 04/09 (S) Amended
- 10 04/09 (S) Passed As Amended {Vote}
- 11 04/10 (S) Returned For Concurrence
- 12 04/17 (H) Concurred in Amend From Senate {Vote}
- 13 04/19 (H) Enrolled Bill Signed
- 14 04/19 (S) Enrolled Bill Signed
- 15 04/26 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 523

**Code Section:** A 047-0005-0943

----- Additional Information -----

**House Committee:** Corrections

**2012 GENERAL LAWS OF MISSISSIPPI, HB 523**

*Senate Committee:* Corrections, Appropriations

*Principal Author:* Flaggs

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 523

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Flaggs

To: Corrections

HOUSE BILL NO. 523  
(As Sent to Governor)

AN ACT TO AMEND SECTION 47-5-943, MISSISSIPPI CODE OF 1972, TO REMOVE THE REQUIREMENT THAT ONLY OFFENDERS WHO ARE 22 YEARS OF AGE OR YOUNGER BE HOUSED AT THE WALNUT GROVE CORRECTIONAL FACILITY; TO AUTHORIZE ANY STATE OFFENDER TO BE HOUSED AT SUCH FACILITY; TO REQUIRE THE DEPARTMENT OF CORRECTIONS TO ESTABLISH A YOUTHFUL OFFENDER UNIT ("YOU") AT THE CENTRAL MISSISSIPPI CORRECTIONAL FACILITY; TO PROVIDE THAT THE YOU SHALL BE FOR YOUTH 17 YEARS OF AGE AND UNDER WHO HAVE BEEN ASSIGNED TO THE DEPARTMENT OF CORRECTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 47-5-943, Mississippi Code of 1972, is amended as follows:

47-5-943. The Mississippi Department of Corrections may contract with the Walnut Grove Correctional Authority or the governing authorities of the Municipality of Walnut Grove, Leake County, Mississippi, to provide for the private housing, care and control of not more than one thousand five hundred (1,500) \* \* \* offenders who are in the custody of the Department of Corrections at a maximum security facility in Walnut Grove. \* \* \* A county or circuit judge shall not order any offender to be housed in the correctional facility authorized in Sections 47-5-943 through 47-5-953. Commitment of \* \* \* offenders shall not be to this facility, but shall be to the jurisdiction of the department. The commissioner shall assign newly sentenced offenders to an appropriate facility consistent with public safety. Any facility owned or leased by the Walnut Grove Correctional Authority or the Municipality of Walnut Grove for this purpose shall be designed, constructed, operated and maintained in accordance with American Correctional Association standards, and shall comply with all constitutional standards of the United States and the State of

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 523

Mississippi and with all court orders that may now or hereinafter be applicable to the facility. The contract must comply with Sections 47-5-1211 through 47-5-1227.

**SECTION 2.** (1) The Mississippi Department of Corrections shall establish a Youthful Offender Unit ("YOU") at the Central Mississippi Correctional Facility. All youth ages 17 years of age and under and who are assigned to a Mississippi Department of Corrections prison shall be housed in the YOU, except that nothing in this section shall prohibit the department from housing a youth who is 17 years of age and under in a community work center or other environments that are less restrictive than a Mississippi Department of Corrections prison.

(2) Youth ages 17 and under as prescribed in this section shall be housed in the YOU, separate from adult inmates. No individual who is over the age of 19 shall be housed in the YOU. The Commissioner of the Department of Corrections shall have discretion to house individuals who are 18 and 19 years of age and who have been classified as vulnerable in the YOU.

(3) The Mississippi Department of Corrections shall provide youth housed at the YOU with the opportunity for the appropriate amounts of interactive, structured rehabilitative and/or educational programming, recreational and leisure activities outside of their cells on a daily basis, including weekends and holidays. The programming developed, as prescribed in this subsection shall, to the extent possible, be tailored to the developmental needs of adolescents.

**SECTION 3.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

House Bill 535

**Description:** Farmers' markets; authorize county and municipal governing authorities to donate funds for the support of.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Two/Thirds

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Appropriations
- 2 03/06 (H) Title Suff Do Pass Comm Sub
- 3 03/12 (H) Committee Substitute Adopted
- 4 03/12 (H) Passed *{Vote}*
- 5 03/12 (H) Motion to Reconsider Entered (Flaggs, Frierson, Huddleston (15th))
- 6 03/14 (H) Motion to Reconsider Tabled
- 7 03/14 (H) Transmitted To Senate
- 8 03/16 (S) Referred To Accountability, Efficiency, Transparency; Appropriations
- 9 03/29 (S) DR - TSDPAA: AC To AP
- 10 03/29 (S) Title Suff Do Pass As Amended
- 11 04/05 (S) Amended
- 12 04/05 (S) Passed As Amended *{Vote}*
- 13 04/10 (S) Returned For Concurrence
- 14 04/11 (H) Concurred in Amend From Senate *{Vote}*
- 15 04/18 (H) Enrolled Bill Signed
- 16 04/18 (S) Enrolled Bill Signed
- 17 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 ***Adopted*** *Voice Vote*

  Amendment Report for House Bill No. 535

**Code Section:** A 019-0005-0073, A 019-0005-0093

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

### ----- Additional Information -----

*House Committee:* Appropriations

*Senate Committee:* Accountability, Efficiency, Transparency, Appropriations

*Principal Author:* Barker

*Additional Authors:* Morgan, Shows

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Barker, Morgan, Shows

To: Appropriations

HOUSE BILL NO. 535  
(As Sent to Governor)

AN ACT TO CREATE NEW SECTION 21-19-69, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE GOVERNING AUTHORITIES OF ANY MUNICIPALITY TO DONATE FUNDS FOR THE SUPPORT OF ANY FARMERS' MARKET THAT IS CERTIFIED BY THE MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE AND OPERATING WITHIN THE MUNICIPALITY; TO AMEND SECTIONS 19-5-73 AND 19-5-93, MISSISSIPPI CODE OF 1972, TO AUTHORIZE EACH COUNTY BOARD OF SUPERVISORS TO DONATE AND EXPEND FUNDS FOR THE SUPPORT OF ANY FARMERS' MARKET THAT IS CERTIFIED BY THE MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE AND OPERATING WITHIN THE COUNTY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 21-19-69, Mississippi Code of 1972:

21-19-69. The governing authorities of any municipality of this state, in their discretion, may donate annually out of any money in the municipal treasury, such sums as deemed advisable to support any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the municipality, not to exceed the amount that would be generated from the levy of a one-fourth (1/4) mill ad valorem tax upon all taxable property in the municipality.

**SECTION 2.** Section 19-5-73, Mississippi Code of 1972, is amended as follows:

19-5-73. The board of supervisors of each county may expend monies from the general fund, not exceeding the amount that would be generated from the levy of a one-fourth (1/4) mill ad valorem tax upon all taxable property in the county, for the purpose of providing funds to be expended to establish, maintain and operate farmers' markets and facilities that are certified by the Mississippi Department of Agriculture and Commerce and operating

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

within the county to assist in the disposal and sale of farm and other food products in the interest of farmers, consumers and the general public.

**SECTION 3.** Section 19-5-93, Mississippi Code of 1972, is amended as follows:

19-5-93. The board of supervisors of each county is authorized, in its discretion, to donate money for the objects and purposes following, to wit:

(a) **Confederate graves.** For the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service, and the purchase, if necessary, of the land on which any of the said graveyards may be situated, and the erection and maintenance of appropriate monuments and appropriate inscriptions thereon. In the exercise of this power the board is fully authorized to accept donations of land on which any of said graveyards may be situated and also money or funds to be used for any of the purposes in this section expressed.

Any board of supervisors may, in its discretion, contribute money to be used for the upkeep of graves of the Confederate dead in its county.

(b) **Care of the aged.** For the support and maintenance of such residents of the county who are worthy, indigent aged inmates of the Old Ladies' Home of Jackson, Mississippi, or of the Golden Age Nursing Home and Hospital for North Mississippi of Greenwood, Mississippi, and not exceeding Five Hundred Dollars (\$500.00) per annum for the support of the county's inmates of the Old Men's Home, located near Jackson, Mississippi, and in addition thereto a sum not exceeding Two Hundred Dollars (\$200.00) per annum to each of said institutions for their support and maintenance in the care of the aged.

(c) **King's Daughters.** To the King's Daughters in their respective counties for charities under their supervision.

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(d) **Travelers Aid Society.** A sum of money not exceeding Fifteen Dollars (\$15.00) per month for the support of the organization known as the Travelers Aid Society, provided the same is nonsectarian.

(e) **Hospitals for pellagra sufferers.** For the establishment and maintenance of a hospital for the treatment of persons afflicted with pellagra. For this purpose the board may issue bonds and incur such indebtedness within the limits now authorized by law.

(f) **Tubercular hospitals.** For the establishment and maintenance of a hospital for the care and treatment of persons suffering from tuberculosis. In the execution of this power the board may select trustees to establish and operate said hospital. In counties having a population of more than forty thousand (40,000) people, as shown by the latest United States census, the board may set aside, appropriate and expend monies from the general fund for the purpose of aiding in the maintenance and support of hospitals maintained and operated in such county for the care and treatment of persons suffering from tuberculosis. The monies shall be expended by the board through such trustees, not less than three (3) and not more than five (5), to be elected by the board of supervisors annually. The trustees shall file reports with the board at least once every six (6) months showing in detail all expenditures made by them and the number of patients which have been for the preceding period aided or cared for by the institution, and the board may otherwise require a strict accounting of the administration of said funds.

(g) **Same -- additional provisions.** The boards of supervisors of one or more counties are hereby authorized and empowered, in their discretion, separately or jointly, to acquire by gift, purchase or lease, real estate, for tubercular hospital purposes, and to own, erect, build, establish, maintain, regulate



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and support a tubercular hospital and to remodel buildings on such property to be used for such hospital purposes.

In the event the boards of supervisors of two (2) or more counties agree to cooperate in establishing and maintaining such hospital, the board of supervisors of each of said counties shall adopt a resolution agreeing to the proportionate part each county will contribute to the establishment and maintaining of such hospital.

Each county operating under the provisions of this subsection is hereby authorized and empowered to set aside, appropriate and expend monies from the general fund for the purpose of erecting, maintaining and operating such hospital.

(h) **Charity wards in hospitals.** A sum of money not exceeding One Hundred Dollars (\$100.00) per month to maintain a charity ward or wards in any hospital in their respective counties, or in the event there shall be no hospital in such county, then a like sum, in their discretion, to maintain a charity ward or wards in any hospital in any adjoining county receiving and treating patients from such county having no hospital.

(i) **Same -- coast counties.** The several counties of this state bordering on the tidewater of the Gulf of Mexico are hereby authorized and empowered, in the discretion of the proper authorities thereof, to appropriate such a sum of money as said authorities shall deem reasonable, to provide and maintain a charity ward or wards, in any of the hospitals in said counties, or, in the discretion of said authorities, to make and enter into contracts with any such hospitals for the treatment and care in such hospitals of the indigent sick of said counties, and to pay therefor out of the general fund of such counties such sum or sums as shall be a reasonable and just compensation to said hospital. However, the board of supervisors of any county mentioned herein may, in its discretion, make and enter into contracts with any

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

hospital in any adjoining county receiving and treating patients from the respective counties mentioned herein in such hospitals of the indigent sick of said counties, mentioned herein, and to pay therefor out of the general fund of such county, such sum or sums that shall be reasonable and just to said hospitals.

(j) **Public libraries.** A sum not to exceed One Thousand Dollars (\$1,000.00) per annum toward the support and maintenance of one or more public libraries situated in the county. In any county whose total assessed valuation, including railroads and all public utilities, is more than Eighteen Million Dollars (\$18,000,000.00) the board, in its discretion, may appropriate a sum not to exceed Three Thousand Dollars (\$3,000.00) per annum for public libraries.

The board may also give or donate any legislative journals, constitutional convention journals, printed official reports of any state or county officers, official reports of departments, bureaus or officers of the United States, and copies of the acts of the Legislature or laws of Mississippi now or hereafter in the county library of such county and not needed, in the opinion of the board in the county library (but not including any Mississippi reports and not including any acts of the Legislature or laws of the state, unless such acts or laws be more than twenty (20) years old) to any library or library association or foundation or organization maintaining a free public library for reference or otherwise, provided such library, association, foundation or organization owns free from encumbrance a fireproof library building located in this state, in which building said journals, reports, acts and laws may be and shall be deposited where received under this subsection and made accessible under reasonable regulations to the general public. Such library, association, foundation or organization shall not have the right to sell or otherwise dispose of said journals, reports, acts and laws. Said journals, reports, acts and laws may be returned to

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

the county library from which received without expense to the county, or to the state library, without expense to the state, at any time by the library, association, foundation or organization receiving the same.

Any gift or donation made by the board of supervisors of any county under the authority of this subsection shall be evidenced by an order spread upon the minutes of said board. The county shall bear no expense in connection with any donation. The sheriff of the county, or the custodian of the county library, shall deliver to the representative of the library, association, foundation or organization entitled to receive the same any of said journals, reports, acts, laws and official publications in accordance with the directions contained in any order of the board of supervisors for the delivery of the same, and shall take proper receipt from the party receiving the same, and shall deliver such receipt to the clerk of the board of supervisors of the county, and the board of supervisors shall have the said receipt entered in full on the minutes of the board.

Any library, association, foundation or organization receiving any gift or donation from any county under this subsection shall report in writing to the board of supervisors, from which such gifts or donations have been received every two (2) years, that the gifts and donations so received are still in the possession of the donee and are accessible to the general public. If any of the gifts or donations so received have been lost, destroyed or have otherwise disappeared, report thereof shall be made.

If any library, association, foundation or organization receiving gifts or donations under this subsection shall cease operating as a free public library or shall cease to be the owner of a fireproof building in which it keeps and maintains a free public library, for reference or otherwise, the said library, association, foundation or organization shall thereupon

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

immediately return to the county library, without expense to the county, or to the state library, without expense to the state, any gifts or donations it may have received under this subsection.

(k) **Patriotic organizations and memorials.** A sum not to exceed Five Thousand Dollars (\$5,000.00) to build or aid any post of the American Legion, any chapter of the Daughters of the American Revolution, any chapter of the United Daughters of the Confederacy, or any post, unit or chapter of any patriotic organization within the county in building a memorial to the veterans of World War I and World War II; and a sum not to exceed One Thousand Dollars (\$1,000.00) to aid in defraying the cost of the erection of suitable memorials to deceased soldiers, sailors and marines of the late world wars. Such appropriation may be made, even though no provision has been made therefor in the county budget.

(l) **American Red Cross.** Any board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually, out of any monies in its respective treasury, to be drawn by warrant thereon, a sum not exceeding One Hundred Dollars (\$100.00) per million of assessed valuation to the support of a local chapter of the American Red Cross.

(m) **St. Jude Hospital.** For the payment of mileage expense for transporting persons to St. Jude Hospital in Memphis, Tennessee, for treatment. The mileage shall be based on a round-trip basis from the patient's place of residence to St. Jude Hospital at the mileage rate set forth in Section 25-3-41.

(n) **Public museums.** For the support and maintenance of such public museums located in the county constituted under the provisions of Chapter 9, Title 39, Mississippi Code of 1972.

(o) **Domestic violence shelters.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate annually out of any money



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

in the county treasury, such sums as the board deems advisable to support any domestic violence shelter or rape crisis center operating within or serving its area. For the purposes of this section, "rape crisis center" means a place established to provide care, counseling and related services to victims of rape, attempted rape, sexual battery or attempted sexual battery.

(p) **Literacy programs.** The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to donate out of the general fund of the county such sum of money as the board deems reasonable to any literacy program being conducted within the county.

(q) **Care of neglected children.** The board of supervisors of any county in this state, in its discretion, may donate annually out of any money in the county treasury such sums as the board deems advisable to support any residential group home for the abused, abandoned or neglected children which operates within or serves the county. For the purposes of this paragraph the term "residential group home" means a group residence established to provide care and counseling, and to serve as a home, for children who are the victims of abuse, neglect or abandonment.

(r) **Boys and Girls Club.** To any chartered chapter of the Boys and Girls Clubs of America located within the county, out of any funds in the county treasury, provided that the cumulative sum of donations to all chapters within the county does not exceed the amount generated in the county by one-fourth (1/4) mill on all of the taxable property within the county, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(s) **Mississippi Burn Care Fund.** To the Mississippi Burn Care Fund, subject to the limitations specified in Section 21-19-58.



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 535

(t) **Court Appointed Special Advocates.** To any chapter of the Court Appointed Special Advocates (CASA), out of any funds in the county treasury, provided that the cumulative sum of donations to a chapter does not exceed the amount generated in the county by one-fourth (1/4) mill on all of the taxable property within the county, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(u) **National Voluntary Organizations Active in Disaster (NVOAD).** To a local chapter of NVOAD, whether in-kind contributions or out of any funds in the county treasury, provided that the cumulative sum of donations to a local NVOAD does not exceed the amount generated in the county by one-fourth (1/4) mill on all of the taxable property within the county during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(v) **Farmers' Markets.** The board of supervisors of any county in this state, in its discretion, may donate annually out of any money in the county treasury, such sums as the board deems advisable to support any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the county, not to exceed the amount that would be generated from the levy of a one-fourth (1/4) mill ad valorem tax upon all taxable property in the county.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 540

**Description:** School property and facilities; authorize shared use agreements for public recreation and sports.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority


*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (H) Referred To Education
- 2 02/22 (H) Title Suff Do Pass
- 3 03/07 (H) Passed {Vote}
- 4 03/08 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Education
- 6 04/03 (S) Title Suff Do Pass As Amended
- 7 04/04 (S) Amended
- 8 04/04 (S) Passed As Amended {Vote}
- 9 04/05 (S) Returned For Concurrence
- 10 04/13 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (S) Enrolled Bill Signed
- 12 04/18 (H) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *Voice Vote*

  Amendment Report for House Bill No. 540

----- Additional Information -----

**House Committee:** Education

**Senate Committee:** Education

**Principal Author:** Barker

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 540

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Barker

To: Education

HOUSE BILL NO. 540  
(As Sent to Governor)

AN ACT TO AUTHORIZE LOCAL SCHOOL BOARDS TO ALLOW SCHOOL PROPERTY TO BE USED BY THE PUBLIC DURING NONSCHOOL HOURS FOR RECREATION AND SPORTS; TO EXPRESS CERTAIN LEGISLATIVE FINDINGS REGARDING OBESITY AND ASSOCIATED HEALTH RISKS; TO DEFINE CERTAIN TERMS; TO LIMIT THE LIABILITY OF SCHOOL DISTRICTS AND SCHOOL DISTRICT EMPLOYEES FOR CLAIMS ARISING FROM THE PUBLIC'S USE OF SCHOOL PROPERTY AND FACILITIES FOR RECREATION AND SPORTS; TO ENCOURAGE SCHOOL DISTRICTS TO ENTER INTO SHARED USE AGREEMENTS WITH COMMUNITY ORGANIZATIONS AND LOCAL GOVERNMENTAL ENTITIES FOR PURPOSES OF RECREATION AND SPORTS; TO REQUIRE THE STATE DEPARTMENT OF EDUCATION, IN CONSULTATION WITH THE STATE DEPARTMENT OF HEALTH, TO DEVELOP A BEST PRACTICES TOOL KIT RELATING TO SHARED USE AGREEMENTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) The Legislature finds the following:

(a) The Centers for Disease Control and Prevention has released studies documenting:

(i) Overweight and obese children experience the same risk factors that are associated with heart disease in adults, including high blood pressure, high cholesterol levels and Type 2 diabetes, once referred to as adult-onset diabetes;

(ii) Every year, an estimated three hundred thousand (300,000) people in America die because of diseases caused by being overweight and obese;

(iii) Studies have shown that up to eighty percent (80%) of overweight adolescents become overweight adults;

(iv) Fourteen percent (14%) of deaths from cancer in men and twenty percent (20%) of cancer deaths in women are because of being overweight and obese; and

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(v) The annual economic impact in the United States from obesity on our health care system is estimated at One Hundred Forty-seven Billion Dollars (\$147,000,000,000.00);

(b) According to the National Survey of Children's Health, Mississippi's childhood obesity rates are the highest in the nation;

(c) A recent study by a major insurance carrier stated that fifty percent (50%) of all Americans will have diabetes by the year 2020, costing the health care system approximately Three Trillion Three Hundred Fifty Billion Dollars (\$3,350,000,000,000.00) if current trends in obesity are not abated; and

(d) According to the Journal of Nutrition Education and Behavior, adults with a household member who participated in a community garden consumed fruits and vegetables one and four-tenths (1-4/10) more times per day than those who did not participate, and they were three and one-half (3-1/2) times more likely to consume fruits and vegetables at least five (5) times daily.

(2) Therefore, the Legislature declares that the intent of this act is to make school property available to community members during nonschool hours for recreational activities in order to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community support for schools.

**SECTION 2.** As used in this act, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Recreation" means any indoor or outdoor game or activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure.

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(b) "School property" means all indoor or outdoor structures, facilities and land, whether owned, rented or leased by the school or school district.

(c) "Sport" means an activity requiring physical exertion and skill and which, by its nature and organization, is competitive and generally accepted as being a sport.

(d) "Shared use agreement" means a legal agreement that defines the rights and responsibilities of the school district and another organization or governmental agency for use of the school facilities for recreation or other purpose of importance to the community.

(e) "Local government entity" means any county, municipality, school district, public hospital or other political subdivision of the state.

**SECTION 3.** (1) The school board of a school district may adopt a policy allowing the public use of indoor or outdoor school property during nonschool hours for purposes of recreation or sport. The school district must ensure that this use of school facilities by the public does not interfere with the use of those facilities for school purposes.

(2) School districts and school district employees may not be held liable for any claim resulting from a loss or injury arising from the use of indoor or outdoor school property or facilities made available for public recreation or sport. However, this act does not relieve a school district or school district employee of liability that otherwise exists for:

(a) Deliberate, willful or malicious injury to persons or property by a school district employee; or

(b) Injury resulting from a lack of proper maintenance or upkeep of a piece of equipment or facilities, unless the school district or school district employee had attempted to restrict access to a piece of equipment or facilities area in need of repair which would endanger a student during normal school hours.



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This subsection may not be deemed to create or increase the liability of any person.

**SECTION 4.** (1) School districts are encouraged strongly to enter into shared use agreements with community organizations and local governmental agencies.

(2) Local government entities are expressly authorized to enter into such shared use agreements and/or expend public funds and/or to use public labor and/or equipment and/or commodities in furtherance of the purpose of such agreements.

(3) The State Department of Education, in consultation with the State Department of Health, shall develop a best practices tool kit relating to shared use agreements for school districts. This tool kit must include:

(a) Information outlining liability protections for both the school district and school district employees for injuries resulting from community use of school property or facilities for purposes of recreation or sport during nonschool hours;

(b) Model shared use agreement language;

(c) A list of technical assistance resources available for the school district to promote community recreational use of school property or facilities during nonschool hours;

(d) A list of potential community partners for shared use agreements; and

(e) A list of any grants or funding opportunities available to school districts to promote community recreational use of school property or facilities during nonschool hours.

The tool kit must be posted on the State Department of Education and State Department of Health websites. The State Department of Education shall review the information required by this section no less than every two (2) years and shall update the information as necessary.

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(4) The State Department of Education shall provide a link on the department's website to any school district policies or procedures that promote community recreational use of school property or facilities in order to encourage information sharing among the school districts.

(5) Each school district, in consultation with the school health council, must address community recreational use of school property or facilities during nonschool hours.

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 582

**Description:** Sales tax; exempt sales of utilities to churches.

**Background Information:**

*Disposition:* Law

*Deadline:* Revenue

*Revenue:* Yes



*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/17 (H) Referred To Ways and Means
- 2 03/21 (H) Title Suff Do Pass
- 3 03/21 (H) Passed {Vote}
- 4 03/22 (H) Transmitted To Senate
- 5 03/26 (S) Referred To Finance
- 6 04/12 (S) Title Suff Do Pass
- 7 04/17 (S) Amended
- 8 04/17 (S) Passed As Amended {Vote}
- 9 04/18 (S) Returned For Concurrence
- 10 04/19 (H) Concurred in Amend From Senate {Vote}
- 11 04/24 (H) Enrolled Bill Signed
- 12 04/24 (S) Enrolled Bill Signed
- 13 05/01 Approved by Governor

**Amendments:**

  [S] Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 582

**Code Section:** A 027-0065-0019

----- Additional Information -----

**House Committee:** Ways and Means

**Senate Committee:** Finance

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 582

**Principal Author:** Chism

**Additional Authors:** Moak, Reynolds, Evans (43rd), Baker, Rogers (61st), McGee, Jennings, Carpenter, Moore, Currie, Formby, Young, Miles, Bennett, Eure, Haney, Myers, Perkins, Dixon, Turner

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 582

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Chism, Moak, Reynolds,  
Evans (43rd), Baker, Rogers (61st), McGee,  
Jennings, Carpenter, Moore, Currie, Formby,  
Young, Miles, Bennett, Eure, Haney, Myers,  
Perkins, Dixon, Turner

To: Ways and Means

HOUSE BILL NO. 582  
(As Sent to Governor)

AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972,  
TO PROVIDE THAT CERTAIN SALES OF UTILITIES TO CHURCHES SHALL BE  
EXEMPT FROM SALES TAXATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 27-65-19, Mississippi Code of 1972, is  
amended as follows:

27-65-19. (1) (a) (i) Except as otherwise provided in  
this subsection, upon every person selling to consumers,  
electricity, current, power, potable water, steam, coal, natural  
gas, liquefied petroleum gas or other fuel, there is hereby  
levied, assessed and shall be collected a tax equal to seven  
percent (7%) of the gross income of the business. Provided, gross  
income from sales to consumers of electricity, current, power,  
natural gas, liquefied petroleum gas or other fuel for residential  
heating, lighting or other residential noncommercial or  
nonagricultural use, and sales of potable water for residential,  
noncommercial or nonagricultural use shall be excluded from  
taxable gross income of the business. Provided further, upon  
every such seller using electricity, current, power, potable  
water, steam, coal, natural gas, liquefied petroleum gas or other  
fuel for nonindustrial purposes, there is hereby levied, assessed  
and shall be collected a tax equal to seven percent (7%) of the  
cost or value of the product or service used.

(ii) Gross income from sales to a church that is  
exempt from federal income taxation under 26 USCS Section  
501(c)(3) of electricity, current, power, natural gas, liquefied  
petroleum gas or other fuel for heating, lighting or other use,



and sales of potable water to such a church shall be excluded from taxable gross income of the business if the electricity, current, power, natural gas, liquefied petroleum gas or potable water is utilized on property that is primarily used for religious or educational purposes.

(b) There is hereby levied, assessed and shall be collected a tax equal to one and one-half percent (1-1/2%) of the gross income of the business when the electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel is sold to or used by a manufacturer, custom processor, technology intensive enterprise meeting the criteria provided for in Section 27-65-17(1)(f), or public service company for industrial purposes, which shall include that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations or to operate railroad locomotives; however, the tax imposed on natural gas under this paragraph shall not exceed Ten and One-half Cents (10.5¢) per one thousand (1,000) cubic feet and sales of fuel used to produce electric power by a company primarily engaged in the business of producing, generating or distributing electric power for sale shall be exempt from sales tax as provided in Section 27-65-107.

(c) (i) The one and one-half percent (1-1/2%) industrial rate provided for in this subsection shall also apply when the electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel is sold to a producer or processor for use directly in the production of poultry or poultry products, the production of livestock and livestock products, the production of domesticated fish and domesticated fish products, the production of marine aquaculture products, the production of plants or food by commercial horticulturists, the processing of milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.

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(ii) The one and one-half percent (1-1/2%) rate provided for in this subsection shall also apply to the sale of naturally occurring carbon dioxide and anthropogenic carbon dioxide lawfully injected into the earth for:

1. Use in an enhanced oil recovery project, including, but not limited to, use for cycling, repressuring or lifting of oil; or
2. Permanent sequestration in a geological formation.

(d) The one and one-half percent (1-1/2%) rate provided for in this subsection shall not apply to sales of fuel for automobiles, trucks, truck-tractors, buses, farm tractors or airplanes.

(e) (i) Upon every person providing services in this state, there is hereby levied, assessed and shall be collected:

1. A tax equal to seven percent (7%) of the gross income received from all charges for intrastate telecommunications services.

2. A tax equal to seven percent (7%) of the gross income received from all charges for interstate telecommunications services.

3. A tax equal to seven percent (7%) of the gross income received from all charges for international telecommunications services.

4. A tax equal to seven percent (7%) of the gross income received from all charges for ancillary services.

5. A tax equal to seven percent (7%) of the gross income received from all charges for products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones.

(ii) A person, upon proof that he has paid a tax in another state on an event described in subparagraph (i) of this paragraph (e), shall be allowed a credit against the tax imposed

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in this paragraph (e) on interstate telecommunications service charges to the extent that the amount of such tax is properly due and actually paid in such other state and to the extent that the rate of sales tax imposed by and paid in such other state does not exceed the rate of sales tax imposed by this paragraph (e).

(iii) Charges by one (1) telecommunications provider to another telecommunications provider holding a permit issued under Section 27-65-27 for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (e).

(iv) For purposes of this paragraph (e):

1. "Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between points. The term "telecommunications service" includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. The term "telecommunications service" shall not include:

a. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

b. Installation or maintenance of wiring or equipment on a customer's premises;

c. Tangible personal property;

d. Advertising, including, but not limited to, directory advertising;

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e. Billing and collection services provided to third parties;

f. Internet access service;

g. Radio and television audio and video programming services regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 USCS 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

h. Ancillary services; or

i. Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones.

2. "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service and voice mail service.

a. "Conference bridging" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging does not include the telecommunications services used to reach the conference bridge.

b. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

c. "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

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d. "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

e. "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

3. "Intrastate" means telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession.

4. "Interstate" means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in a different United States state or United States territory or possession.

5. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.

(v) For purposes of paragraph (e), the following sourcing rules shall apply:

1. Except for the defined telecommunications services in item 3 of this subparagraph, the sales of telecommunications services sold on a call-by-call basis shall be sourced to:

a. Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or

b. Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.



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2. Except for the defined telecommunications services in item 3 of this subparagraph, a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service is sourced to the customer's place of primary use as required by the Mobile Telecommunication Sourcing Act.

A. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. The home service provider shall be entitled to rely on the applicable residential or business street address supplied by such customer, if the home service provider's reliance is in good faith; and the home service provider shall be held harmless from liability for any additional taxes based on a different determination of the place of primary use for taxes that are customarily passed on to the customer as a separate itemized charge. A home service provider shall be allowed to treat the address used for purposes of the tax levied by this chapter for any customer under a service contract in effect on August 1, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement. Month-to-month services provided after the expiration of a contract shall be treated as an extension or renewal of such contract or agreement.

B. If the commissioner determines that the address used by a home service provider as a customer's place of primary use does not meet the definition of the term

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"place of primary use" as defined in subitem a.A. of this item 3, the commissioner shall give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination; however, the customer shall have the opportunity, prior to such notice of determination, to demonstrate that such address satisfies the definition.

C. The department has the right to collect any taxes due directly from the home service provider's customer that has failed to provide an address that meets the definition of the term "place of primary use" which resulted in a failure of tax otherwise due being remitted.

b. A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

A. The seller's telecommunications system; or

B. Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. A sale of a prepaid calling service or prepaid wireless calling service shall be subject to the tax imposed by this paragraph if the sale takes place in this state. If the customer physically purchases a prepaid calling service or prepaid wireless calling service at the vendor's place of business, the sale is deemed to take place at the vendor's place of business. If the customer does not physically purchase the service at the vendor's place of business, the sale of a prepaid calling card or prepaid wireless calling card is deemed to take place at the first of the following locations that applies to the sale:

A. The customer's shipping address, if the sale involves a shipment;

B. The customer's billing address;

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C. Any other address of the customer that is known by the vendor; or

D. The address of the vendor, or alternatively, in the case of a prepaid wireless calling service, the location associated with the mobile telephone number.

4. A sale of a private communication service is sourced as follows:

a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

b. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

c. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

d. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

5. A sale of ancillary services is sourced to the customer's place of primary use.

(vi) For purposes of subparagraph (v) of this paragraph (e):

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1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

2. "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

5. "Customer channel termination point" means the location where the customer either inputs or receives the communications.

6. "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

7. "Home service provider" has the meaning ascribed to such term in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

8. "Mobile telecommunications service" has the meaning ascribed to such term in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

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9. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

10. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunications service.

11. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

12. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary service, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

13. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels



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between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of such channel or channels.

14. "Service address" means:

a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

b. If the location in subitem a of this item 14 is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. If the location in subitems a and b of this item 14 are not known, the location of the customer's place of primary use.

(vii) 1. For purposes of this subparagraph (vii), "bundled transaction" means a transaction that consists of distinct and identifiable properties or services which are sold for a single nonitemized price but which are treated differently for tax purposes.

2. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, or audio or video programming services taxed under this chapter in which the price of the bundled transaction is attributable to properties or services that are taxable and nontaxable, the portion of the price that is attributable to any nontaxable property or service shall be subject to the tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business.

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3. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, audio or video programming services subject to tax under this chapter in which the price is attributable to properties or services that are subject to the tax but the tax revenue from the different properties or services are dedicated to different funds or purposes, the provider shall allocate the price among the properties or services:

a. By reasonably identifying the portion of the price attributable to each of the properties and services from its books and records kept in the regular course of business; or

b. Based on a reasonable allocation methodology approved by the department.

4. This subparagraph (vii) shall not create a right of action for a customer to require that the provider or the department, for purposes of determining the amount of tax applicable to a bundled transaction, allocate the price to the different portions of the transaction in order to minimize the amount of tax charged to the customer. A customer shall not be entitled to rely on the fact that a portion of the price is attributable to properties or services not subject to tax unless the provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the portion of the price attributable to the properties or services not subject to the tax.

(2) Persons making sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use or sales of potable water for residential, noncommercial or nonagricultural use shall indicate

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on each statement rendered to customers that such charges are exempt from sales taxes.

(3) There is hereby levied, assessed and shall be paid on transportation charges on shipments moving between points within this state when paid directly by the consumer, a tax equal to the rate applicable to the sale of the property being transported. Such tax shall be reported and paid directly to the Department of Revenue by the consumer.

**SECTION 2.** Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 631

**Description:** Bail bondsmen; revise certain licensing laws under the authority of the Department of Insurance.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/17 (H) Referred To Insurance;Judiciary B
- 2 02/28 (H) DR - TSDP: IN To JB
- 3 03/06 (H) DR - TSDP: JB To IN
- 4 03/06 (H) Title Suff Do Pass
- 5 03/09 (H) Passed {Vote}
- 6 03/12 (H) Transmitted To Senate
- 7 03/15 (S) Referred To Judiciary, Division B
- 8 03/29 (S) Title Suff Do Pass As Amended
- 9 04/04 (S) Amended
- 10 04/04 (S) Passed As Amended {Vote}
- 11 04/05 (S) Returned For Concurrence
- 12 04/09 (H) Concurred in Amend From Senate {Vote}
- 13 04/12 (S) Enrolled Bill Signed
- 14 04/12 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *Voice Vote*

  Amendment Report for House Bill No. 631

**Code Section:** A 083-0039-0003, A 083-0039-0007, A 083-0039-0008, A 083-0039-0027

----- Additional Information -----

**House Committee:** Insurance, Judiciary B

**2012 GENERAL LAWS OF MISSISSIPPI, HB 631**

***Senate Committee:*** Judiciary, Division B

***Principal Author:*** Chism



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 631

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Chism

To: Insurance; Judiciary B

HOUSE BILL NO. 631  
(As Sent to Governor)

AN ACT TO AMEND SECTION 83-39-3, MISSISSIPPI CODE OF 1972, TO ALLOW A SOLICITING BAIL AGENT OR ENFORCEMENT AGENT WHO HAS BEEN TERMINATED BY, OR CEASED EMPLOYMENT WITH, A PROFESSIONAL BAIL AGENT TO BE RELICENSED WITHOUT PRELICENSING EDUCATION UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 83-39-7, MISSISSIPPI CODE OF 1972, TO ALLOW THE RETURN OF QUALIFICATION BOND TO THE PERSONAL SURETY AGENT UPON ORDER OF THE COURT OR AFTER FIVE YEARS FROM THE DATE OF LAST LICENSURE; TO AMEND SECTION 83-39-8, MISSISSIPPI CODE OF 1972, TO ALLOW A PERSONAL REPRESENTATIVE TO MANAGE AND CLOSE THE BUSINESS OF A PERSONAL SURETY THAT HAS DIED; TO AMEND SECTION 83-39-27, MISSISSIPPI CODE OF 1972, TO MAKE IT UNLAWFUL FOR A BAIL AGENT TO REFUSE TO RETURN COLLATERAL SECURITY WHEN THE PREMIUM HAS BEEN PAID OR BOND OBLIGATION HAS BEEN TERMINATED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 83-39-3, Mississippi Code of 1972, is amended as follows:

83-39-3. (1) No person shall act in the capacity of professional bail agent, soliciting bail agent or bail enforcement agent, as defined in Section 83-39-1, or perform any of the functions, duties or powers of the same unless that person shall be qualified and licensed as provided in this chapter. The terms of this chapter shall not apply to any automobile club or association, financial institution, insurance company or other organization or association or their employees who execute bail bonds on violations arising out of the use of a motor vehicle by their members, policyholders or borrowers when bail bond is not the principal benefit of membership, the policy of insurance or of a loan to such member, policyholder or borrower.

(2) (a) No license shall be issued or renewed except in compliance with this chapter, and none shall be issued except to an individual. No firm, partnership, association or corporation,

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as such, shall be so licensed. No professional bail agent shall operate under more than one (1) trade name. A soliciting bail agent and bail enforcement agent shall operate only under the professional bail agent's name. No license shall be issued to or renewed for any person who has ever been convicted of a felony or any crime involving moral turpitude or who is under twenty-one (21) years of age. No person engaged as a law enforcement or judicial official or attorney shall be licensed hereunder. A person who is employed in any capacity at any jail or corrections facility that houses state, county or municipal inmates who are bailable, whether the person is a public employee, independent contractor, or the employee of an independent contractor, may not be licensed under this section.

(b) (i) No person who is a relative of either a sworn state, county or municipal law enforcement official or judicial official, or an employee, independent contractor or the contractor's employee of any police department, sheriff's department, jail or corrections facility that houses or holds federal, state, county or municipal inmates who are bailable, shall write a bond in the county where the law enforcement entity or court in which the person's relative serves is located. "Relative" means a spouse, parent, grandparent, child, sister, brother, or a consanguineous aunt, uncle, niece or nephew. Violation of this prohibition shall result in license revocation.

(ii) No person licensed under this chapter shall act as a personal surety agent in the writing of bail during a period he or she is licensed as a limited surety agent, as defined herein.

(iii) No person licensed under this chapter shall give legal advice or a legal opinion in any form.

(3) The department is vested with the authority to enforce this chapter. The department may conduct investigations or request other state, county or local officials to conduct

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investigations and promulgate such rules and regulations as may be necessary for the enforcement of this chapter. The department may establish monetary fines and collect such fines as necessary for the enforcement of such rules and regulations. All fines collected shall be deposited in the Special Insurance Department Fund for the operation of that agency.

(4) Each license issued hereunder shall expire biennially on the last day of September, unless revoked or suspended prior thereto by the department, or upon notice served upon the commissioner by the insurer that the authority of a limited surety agent to act for or in behalf of such insurer had been terminated, or upon notice served upon the commissioner \* \* \* that the authority of a soliciting bail agent or bail enforcement agent had been terminated by such professional bail agent. A soliciting bail agent or bail enforcement agent may, upon termination by a professional bail agent or upon his cessation of employment with a professional bail agent, be relicensed without having to comply with the provisions of Section 83-39-3(7)(a), if he has held a license in his respective license category within ninety (90) days of the new application, meets all other requirements set forth in Sections 83-39-5 and 83-39-3(7)(b), and notifies the previous professional bail agent in writing that he is submitting an application for a new license. Licenses shall expire on the last day of September of each odd-numbered year.

(5) The department shall prepare and deliver to each licensee a license showing the name, address and classification of such licensee, and shall certify that the person is a licensed professional bail agent, being designated as a personal surety agent or a limited surety agent, a soliciting bail agent or a bail enforcement agent. In addition, the license, if for a soliciting bail agent or bail enforcement agent, shall show the name of the professional bail agent and any other information as the commissioner deems proper.

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(6) The commissioner, after a hearing under Section 83-39-17, may refuse to issue a privilege license for a soliciting bail agent to change from one (1) professional bail agent to another if he owes any premium or debt to the professional bail agent with whom he is currently licensed. The commissioner, after a hearing under Section 83-39-17, shall refuse to issue a license for a limited surety agent if he owes any premium or debt to an insurer to which he has been appointed. If a license has been granted to a limited surety agent or a soliciting bail agent who owed any premium or debt to an insurer or professional bail agent, the commissioner, after a hearing under Section 83-39-17, shall revoke the license.

(7) (a) Before the issuance of any initial professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof of successful completion of forty (40) classroom hours of prelicensing education approved by the Professional Bail Agents Association of Mississippi, Inc., and conducted by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet. Any applicant who has been properly licensed under this chapter within ninety (90) days of submitting an application for a different license type shall not be subject to the prelicensing education requirement.

(b) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department



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of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8) (a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first year of an original license;

(ii) Except as provided in subparagraph (i), eight (8) classroom hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).

(c) The education hours required under this subsection (8) shall consist of classroom hours approved by the Professional Bail Agents Association of Mississippi, Inc., and provided by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.



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(d) The continuing education requirements under this subsection (8) shall not be required for renewal of a professional bail agent license for any applicant who is sixty-five (65) years of age and who has been licensed as a professional bail agent for a continuous period of twenty (20) years immediately preceding the submission of the application as evidenced by submission of an affidavit, under oath, on a form prescribed by the department, signed by the licensee attesting to satisfaction of the age, licensing, and experience requirements of this paragraph (d).

(9) No license as a professional bail agent shall be issued unless the applicant has been duly licensed by the department as a soliciting bail agent for a period of three (3) consecutive years immediately preceding the submission of the application. However, this subsection (9) shall not apply to any person who was licensed as a professional bail agent before July 1, 2011.

(10) A nonresident person may be licensed as a professional bail agent, bail soliciting agent or bail enforcement agent if:

(a) The person's home state awards licenses to residents of this state on the same basis; and

(b) The person has satisfied all requirements set forth in this chapter.

**SECTION 2.** Section 83-39-7, Mississippi Code of 1972, is amended as follows:

83-39-7. (1) Each applicant for a professional bail agent license who acts as personal surety shall be required to post a qualification bond in the amount of Thirty Thousand Dollars (\$30,000.00). The qualification bond shall be made by depositing with the commissioner the aforesaid amount of bonds of the United States, the State of Mississippi or any agency or subdivision thereof, or a certificate of deposit issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation and made payable jointly to the owner and the Department of Insurance, or shall be written by an insurer as

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defined in this chapter, shall meet the specifications as may be required and defined in this chapter, and shall meet such specifications as may be required and approved by the department. The bond shall be conditioned upon the full and prompt payment of any bail bond issued by such professional bail agent into the court ordering the bond forfeited. The bond shall be to the people of the State of Mississippi in favor of any court of this state, whether municipal, justice, county, circuit, Supreme or other court. If any bond issued by a professional bail agent is declared forfeited and judgment entered thereon by a court of proper jurisdiction as authorized in Section 99-5-25, and the amount of the bond is not paid within ninety (90) days, that court shall order the department to declare the qualification bond of the professional bail agent to be forfeited and the license revoked. If the bond was not forfeited correctly under Section 99-5-25, it shall be returned to the court as uncollectible. The department shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by the professional bail agent and declared forfeited by the court, or the amount of the qualification bond, whichever is the smaller amount. The department shall, after hearing held upon not less than ten (10) days' written notice, suspend the license of the professional bail agent until such time as another qualification bond in the required amount is posted with the department. The revocation of the license of the professional bail agent shall also serve to revoke the license of each soliciting bail agent and bail enforcement agent employed or used by such professional bail agent. In the event of a final judgment of forfeiture of any bail bond written under the provisions of this chapter, the amount of money so forfeited by the final judgment of the proper court, less all accrued court costs and excluding any interest charges or attorney's fees, shall be refunded to the bail agent or his insurance company upon proper

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showing to the court as to which is entitled to same, provided the defendant in such cases is returned to the sheriff of the county to which the original bail bond was returnable within twelve (12) months of the date of such final judgment, or proof made of incarceration of the defendant in another jurisdiction, and that a "Hold Order" has been placed upon the defendant for return of the defendant to the sheriff upon release from the other jurisdiction, the return to the sheriff to be the responsibility of the professional bail agent as provided in subsection (2) of this section, then the bond forfeiture shall be stayed and remission made upon petition to the court, in the amount found in the court's discretion to be just and proper. A bail agent licensed under this chapter shall have a right to apply for and obtain from the proper court an extension of time delaying a final judgment of forfeiture if such bail agent can satisfactorily establish to the court wherein such forfeiture is pending that the defendant named in the bail bond is lawfully in custody outside of the State of Mississippi.

(2) The qualification bond may be released by the department to the professional bail personal surety agent upon an order to release the qualification bond issued by a court of competent jurisdiction, or upon written request to the department by the professional bail personal surety agent no earlier than five (5) years after the expiration date of his last license.

\* \* \*

**SECTION 3.** Section 83-39-8, Mississippi Code of 1972, is amended as follows:

83-39-8. If a professional bail agent who acts as a personal surety agent dies, the personal representative of the estate may contract with licensed professional bail agents, soliciting bail agents or bail enforcement agents to assist him in managing and closing the business affairs of the professional bail agent. The licensed professional bail agent, soliciting bail agent or bail

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enforcement agent contracted by the personal representative may, on behalf of the personal representative, present defendants in court when required, assist in the apprehension and surrender of defendants to the court, or keep defendants under necessary surveillance. Nothing herein shall give the personal representative the authority to execute and sign bail bonds in connection with judicial proceedings.

**SECTION 4.** Section 83-39-27, Mississippi Code of 1972, is amended as follows:

83-39-27. It is unlawful for a licensee to engage in any of the following activities:

(a) Specify, suggest or advise the employment of any particular attorney to represent his principal.

(b) Pay a fee or rebate or give or promise to give anything of value to a jailer, policeman, peace officer, clerk, deputy clerk, any other employee of any court, district attorney or any of his employees or any person who has power to arrest or to hold any person in custody.

(c) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any act on a bond, or as counsel to represent such bail agent, his agent or employees.

(d) Pay a fee or rebate or give or promise to give anything of value to the person on whose bond he is surety.

(e) Pay a fee or rebate or give or promise to give anything of value to any person, other than a soliciting bail agent, for the purpose of procuring a bail bond.

(f) Accept anything of value from a person on whose bond he is surety, or from others on behalf of such person, except the fee or premium on the bond, but the bail agent may accept collateral security or other indemnity.

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(g) Coerce, suggest, aid and abet, offer promise of favor or threaten any person on whose bond he is surety or offers to become surety, to induce that person to commit any crime.

(h) Give legal advice or a legal opinion in any form.

(i) Refuse to return collateral security or other indemnity when the fee or premium on the bond has been fully paid or when the bail agent's obligation on the bond has been terminated.

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 634

**Description:** MS Bureau of Plant Industry; provide administrative hearing for certain violation of provisions relating to.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/17 (H) Referred To Agriculture
- 2 03/02 (H) Title Suff Do Pass
- 3 03/13 (H) Read the Third Time
- 4 03/14 (H) Passed {Vote}
- 5 03/15 (H) Transmitted To Senate
- 6 03/20 (S) Referred To Agriculture;Judiciary, Division B
- 7 03/29 (S) DR - TSDPAA: AG To JB
- 8 04/03 (S) Title Suff Do Pass As Amended
- 9 04/10 (S) Amended
- 10 04/10 (S) Passed As Amended {Vote}
- 11 04/11 (S) Returned For Concurrence
- 12 04/18 (H) Concurred in Amend From Senate {Vote}
- 13 04/20 (H) Enrolled Bill Signed
- 14 04/23 (S) Enrolled Bill Signed
- 15 05/01 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 634

**Code Section:** A 069-0025-0047, A 069-0025-0051, A 069-0025-0109

----- Additional Information -----

**House Committee:** Agriculture

**2012 GENERAL LAWS OF MISSISSIPPI, HB 634**

***Senate Committee:*** Agriculture, Judiciary, Division B

***Principal Author:*** Sullivan

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 634

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Sullivan

To: Agriculture

HOUSE BILL NO. 634  
(As Sent to Governor)

AN ACT TO AMEND SECTIONS 69-25-47, 69-25-51 AND 69-25-109, MISSISSIPPI CODE OF 1972, TO INCLUDE CERTAIN VIOLATIONS OF THE LAW REGULATING PLANT DISEASES, PESTS, BEES AND BEE DISEASES UNDER THE ADMINISTRATIVE HEARING PROCEDURES FOR THE BUREAU OF PLANT INDUSTRY; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 69-25-10, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE CULTIVATION OF CERTAIN NONNATIVE PLANT SPECIES FOR THE PURPOSE OF FUEL PRODUCTION WITHOUT HAVING FIRST OBTAINED A SPECIAL PERMIT FROM THE DEPARTMENT OF AGRICULTURE AND COMMERCE FOR SUCH CULTIVATION; TO ESTABLISH A REMEDY AVAILABLE TO THE DEPARTMENT FOR THE REMOVAL AND DESTRUCTION OF NONNATIVE PLANT SPECIES DETERMINED TO BE A NUISANCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 69-25-47, Mississippi Code of 1972, is amended as follows:

69-25-47. (1) Any person who shall violate any provisions or requirements of this article, or of the rules and regulations made or of any notice given pursuant thereto or shall forge, counterfeit, deface, destroy or wrongfully use any certificate provided for herein or in the rules and regulations made pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment at the discretion of the court having jurisdiction.

(2) In addition to the criminal penalty imposed under subsection (1) of this section, each violation of this article or the applicable rules and regulations established by the commissioner pertaining hereto shall subject the violator to administrative action as provided in Sections 69-25-51 through 69-25-63.

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**SECTION 2.** Section 69-25-51, Mississippi Code of 1972, is amended as follows:

69-25-51. (1) When any administrative allegation or charge is made against a person for violating the rules and regulations of the Bureau of Plant Industry of the Mississippi Department of Agriculture and Commerce or the laws under Sections 69-19-1 through 69-19-15, Sections 69-21-101 through 69-21-128, Sections 69-23-1 through 69-23-135, Sections 69-25-1 through 69-25-47 or Sections 69-25-101 through 69-25-109, Mississippi Code of 1972, the Director of the Bureau of Plant Industry, or his designee, shall act as the reviewing officer. The complaint must be in writing, signed by the person making the charge, and filed in the office of the Bureau of Plant Industry. The department shall send a copy of the complaint and any supporting documents to the person accused along with a summons requiring the accused to respond to the allegations within thirty (30) days. The notification shall be accomplished by any of the methods provided for in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. If the accused does not respond within the thirty-day period, he shall be considered to be in default. Upon receipt of the response and any supporting documents from the accused, the reviewing officer shall determine the merits of the complaint. The reviewing officer may meet informally with the accused and discuss the alleged violation with him.

(2) If the reviewing officer determines that the complaint lacks merit, he may dismiss the complaint.

(3) If the reviewing officer determines that there is substantial evidence that a violation has occurred or if the accused admits to the truth of the allegations upon which the complaint is based, the reviewing officer may impose an appropriate penalty on the accused, which may be any or all of the following:

(a) Issue a warning letter.

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(b) Suspend, modify, deny, cancel or revoke any license or permit granted by the department to the accused.

(c) Issue a stop sale order with regard to any pesticide, plant or other material regulated by the department that is mislabeled or otherwise not in compliance with applicable law or regulations.

(d) Require the accused to relabel any pesticide, plant or other material regulated by the department that is mislabeled.

(e) Seize any pesticide, plant or other material regulated by the department and sell, destroy or otherwise dispose of the material and apply the proceeds of the sale to the state's expenses and any fees or penalties levied under this article.

(f) Refuse to register, cancel or suspend the registration of a pesticide, plant or other material that is not in compliance with any applicable law or regulation.

(g) Levy a civil penalty in an amount not to exceed Five Thousand Dollars (\$5,000.00) for each violation.

In determining the amount of the penalty, the reviewing officer shall consider the appropriateness of the penalty for the particular violation, the effect of the penalty on the person's ability to continue in business and the gravity of the violation.

(4) If the accused requests a hearing with the department, in writing, within thirty (30) days from receipt of the decision of the reviewing officer, the commissioner shall appoint three (3) members of the advisory board to the Bureau of Plant Industry to act as a hearing committee and a hearing shall be scheduled. If the accused fails to request a hearing within the thirty-day period, the decision of the reviewing officer is final.

**SECTION 3.** Section 69-25-109, Mississippi Code of 1972, is amended as follows:

69-25-109. (1) Any person, firm or corporation violating any of the provisions of this article or of the rules or regulations of the Mississippi Department of Agriculture and



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Commerce, adopted in accordance with the provisions thereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than six (6) months in the county jail.

(2) In addition to the criminal penalty imposed under subsection (1) of this section, each violation of this article or the applicable rules and regulations established by the commissioner pertaining hereto shall subject the violator to administrative action as provided in Sections 69-25-51 through 69-25-63.

**SECTION 4.** The following shall be codified as Section 69-25-10, Mississippi Code of 1972:

69-25-10. (1) The purpose and intent of this law is to control and restrict the planting and cultivation of nonnative species of plants in this state which may become invasive or constitute a nuisance. This law shall apply retroactively to existing plantings of nonnative species.

(2) No individual or entity, commercial or noncommercial, may cultivate a nonnative plant species, including a genetically engineered plant, for purposes of fuel production or purposes other than agriculture, in plantings greater in size than one (1) acre, except under a special permit issued by the Department of Agriculture and Commerce. Requests for a permit authorized under this section may be denied if the department, in conjunction with specialists at Mississippi State University, determines that the plant is invasive or has potential to constitute a nuisance.

(3) Each application for a special permit must be accompanied by a surety bond, the name of the plant to be cultivated, a legal description of the lands to be under cultivation and the estimated cost of removing and destroying such plants. Permits issued under this section shall be effective for one (1) year, and upon the expiration thereof, shall be required

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to be renewed by the holder of the permit for continued cultivation of the nonnative plant species. If an individual or entity cultivates more than one (1) nonnative plant species, then a permit must be acquired for each nonnative plant species in the manner required by this subsection.

(4) The surety bond shall be written by a company qualified to do business in this state and in an amount to be determined by the department. The bond shall be conditioned to secure the payment of all costs incurred in removing and destroying the plants cultivated under this permit.

(5) The department shall establish by regulation the circumstances under which it may order the permit holder to remove and destroy the nonnative plant species cultivated under the permit and the procedures to be followed in such cases. The department shall have the right to use the emergency procedures described in Section 69-25-61, in addition to all other rights and remedies available to it, at law or in equity. When the department enters an order requiring the removal and destruction of the subject plants, the permit holder and/or the surety on its bond shall move with dispatch to comply with the order of removal and destruction.

(6) The department shall have the right to enter the permit holder's lands or premises at any time and investigate the operations covered by this permit, to include the power to inspect and copy business and cultivation records, inspect plants, take samples of plants, soil or other substances and take photographs.

(7) The department shall have the right to adopt any and all rules and regulations as may be necessary or desirable to carry out the purpose and intent of this law.

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 681

**Description:** DUI; create child endangerment provision.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths



*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Judiciary B
- 2 03/01 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Committee Substitute Adopted
- 4 03/13 (H) Passed *(Vote)*
- 5 03/15 (H) Transmitted To Senate
- 6 03/16 (S) Referred To Judiciary, Division B
- 7 04/03 (S) Title Suff Do Pass As Amended
- 8 04/11 (S) Amended
- 9 04/11 (S) Passed As Amended *(Vote)*
- 10 04/12 (S) Returned For Concurrence
- 11 04/19 (H) Concurred in Amend From Senate *(Vote)*
- 12 04/24 (H) Enrolled Bill Signed
- 13 04/24 (S) Enrolled Bill Signed
- 14 05/01 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** *voice vote*

  [S] Amendment No 2 **Adopted** *voice vote*

  Amendment Report for House Bill No. 681

**Code Section:** A 063-0011-0030, A 097-0029-0031

----- Additional Information -----

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 681

*House Committee:* Judiciary B

*Senate Committee:* Judiciary, Division B

*Principal Author:* Gipson

*Additional Authors:* Alday, Bell, Boyd, Brown (20th), Busby, Byrd, Carpenter, Chism, Formby, Howell, Lott, Massengill, Monsour, Moore, Nelson, Rogers (61st), Rushing, Staples, Weathersby, Hood, Miles, Eure, Bennett, Haney, Crawford, DeBar

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MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Gipson, Alday, Bell,  
Boyd, Brown (20th), Busby, Byrd, Carpenter,  
Chism, Formby, Howell, Lott, Massengill,  
Monsour, Moore, Nelson, Rogers (61st),  
Rushing, Staples, Weathersby, Hood, Miles,  
Eure, Bennett, Haney, Crawford, DeBar

To: Judiciary B

HOUSE BILL NO. 681  
(As Sent to Governor)

AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE OF DUI CHILD ENDANGERMENT AND PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTION 97-29-31, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR INDECENT EXPOSURE, AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 63-11-30, Mississippi Code of 1972, is amended as follows:

63-11-30. (1) It is unlawful for any person to drive or otherwise operate a vehicle within this state who (a) is under the influence of intoxicating liquor; (b) is under the influence of any other substance which has impaired such person's ability to operate a motor vehicle; (c) has an alcohol concentration of eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, in the person's blood based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter; (d) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or (e) has an alcohol concentration of four one-hundredths percent (.04%) or more in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of such person's



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blood, breath or urine, administered as authorized by this chapter for persons operating a commercial motor vehicle.

(2) (a) Except as otherwise provided in subsection (3), upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. In addition, the Department of Public Safety, the Commissioner of Public Safety or his duly authorized agent shall, after conviction and upon receipt of the court abstract, suspend the driver's license and driving privileges of such person for a period of not less than ninety (90) days and until such person attends and successfully completes an alcohol safety education program as herein provided. Commercial driving privileges shall be suspended as provided in Section 63-1-216.

The circuit court having jurisdiction in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under Section 63-11-30(2)(a) if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under Section 63-11-30(1), and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to

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submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

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- (i) Continue his employment;
- (ii) Continue attending school or an educational institution; or
- (iii) Obtain necessary medical care.

Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(b) Except as otherwise provided in subsection (3), upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than one (1) year and sentenced to community service work for not less than ten (10) days nor more than one (1) year. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. Except as may otherwise be provided by paragraph (d) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for two (2) years. Suspension of a commercial driver's license shall be governed by Section 63-1-216. Upon any second conviction as described in this paragraph, the court shall ascertain whether the defendant is married, and if the defendant is married shall obtain the name and address of the defendant's spouse; the clerk of the court shall submit this information to the Department of Public Safety. Further, the commissioner shall notify in writing, by certified mail, return receipt requested, the owner of the vehicle and the spouse, if any, of the person convicted of the second violation of the possibility of forfeiture of the vehicle if such person is convicted of a third violation of subsection (1) of this section. The owner of the vehicle and the spouse shall be considered notified under this paragraph if the notice is

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 681

deposited in the United States mail and any claim that the notice was not in fact received by the addressee shall not affect a subsequent forfeiture proceeding.

For any second or subsequent conviction of any person under this section, the person shall also be subject to the penalties set forth in Section 63-11-31.

(c) Except as otherwise provided in subsection (3), for any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00), shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections; provided, however, that for any such offense which does not result in serious injury or death to any person, any sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. The law enforcement agency shall seize the vehicle operated by any person charged with a third or subsequent violation of subsection (1) of this section, if such convicted person was driving the vehicle at the time the offense was committed. Such vehicle may be forfeited in the manner provided by Sections 63-11-49 through 63-11-53. Except as may otherwise be provided by paragraph (e) of this subsection, the Commissioner of Public Safety shall suspend the driver's license of such person for five (5) years. The suspension of a commercial driver's license shall be governed by Section 63-1-216.

(d) Except as otherwise provided in subsection (3), any person convicted of a second violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 681

a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall successfully complete treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of one (1) year after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(e) Except as otherwise provided in subsection (3), any person convicted of a third or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem, such person shall enter an alcohol and/or drug abuse program approved by the Department of Mental Health for treatment of such person's alcohol and/or drug abuse problem. If such person successfully completes such treatment, such person shall be eligible for reinstatement of his driving privileges after a period of three (3) years after such person's driver's license is suspended.

(f) The Department of Public Safety shall promulgate rules and regulations for the use of interlock ignition devices as provided in Section 63-11-31 and consistent with the provisions therein. Such rules and regulations shall provide for the calibration of such devices and shall provide that the cost of the use of such systems shall be borne by the offender. The Department of Public Safety shall approve which vendors of such devices shall be used to furnish such systems.

(3) (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection



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shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If such person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, such person shall have his driver's license suspended for ninety (90) days and shall be fined Two Hundred Fifty Dollars (\$250.00); and the court shall order such person to attend and complete an alcohol safety education program as provided in Section 63-11-32. The court may also require attendance at a victim impact panel.

The court in the county in which the conviction was had or the circuit court of the person's county of residence may reduce the suspension of driving privileges under Section 63-11-30(2) (a) if the denial of which would constitute a hardship on the offender, except that no court may issue such an order reducing the suspension of driving privileges under this subsection until thirty (30) days have elapsed from the effective date of the suspension. Hardships shall only apply to first offenses under Section 63-11-30(1), and shall not apply to second, third or subsequent convictions of any person violating subsection (1) of this section. A reduction of suspension on the basis of hardship shall not be available to any person who refused to submit to a chemical test upon the request of a law enforcement officer as provided in Section 63-11-5. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Fifty Dollars (\$50.00), which shall be deposited into the State General Fund to the credit of a special

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 681

fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

The petition filed under the provisions of this subsection shall contain the specific facts which the petitioner alleges to constitute a hardship and the driver's license number of the petitioner. A hearing may be held on any petition filed under this subsection only after ten (10) days' prior written notice to the Commissioner of Public Safety, or his designated agent, or the attorney designated to represent the state. At such hearing, the court may enter an order reducing the period of suspension.

The order entered under the provisions of this subsection shall contain the specific grounds upon which hardship was determined, and shall order the petitioner to attend and complete an alcohol safety education program as provided in Section 63-11-32. A certified copy of such order shall be delivered to the Commissioner of Public Safety by the clerk of the court within five (5) days of the entry of the order. The certified copy of such order shall contain information which will identify the petitioner, including, but not limited to, the name, mailing address, street address, social security number and driver's license number of the petitioner.

At any time following at least thirty (30) days of suspension for a first offense violation of this section, the court may grant the person hardship driving privileges upon written petition of the defendant, if it finds reasonable cause to believe that revocation would hinder the person's ability to:

- (i) Continue his employment;
- (ii) Continue attending school or an educational institution; or
- (iii) Obtain necessary medical care.

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Proof of the hardship shall be established by clear and convincing evidence which shall be supported by independent documentation.

(c) Upon any second conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than Five Hundred Dollars (\$500.00) and shall have his driver's license suspended for one (1) year.

(d) For any third or subsequent conviction of any person under the age of twenty-one (21) years violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$1,000.00) and shall have his driver's license suspended until he reaches the age of twenty-one (21) or for two (2) years, whichever is longer.

(e) Any person under the age of twenty-one (21) years convicted of a second violation of subsection (1) of this section, may have the period that his driver's license is suspended reduced if such person receives an in-depth diagnostic assessment, and as a result of such assessment is determined to be in need of treatment of his alcohol and/or drug abuse problem and successfully completes treatment of his alcohol and/or drug abuse problem at a program site certified by the Department of Mental Health. Such person shall be eligible for reinstatement of his driving privileges upon the successful completion of such treatment after a period of six (6) months after such person's driver's license is suspended. Each person who receives a diagnostic assessment shall pay a fee representing the cost of such assessment. Each person who participates in a treatment program shall pay a fee representing the cost of such treatment.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of

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this section shall complete treatment of an alcohol and/or drug abuse program at a site certified by the Department of Mental Health.

(g) The court shall have the discretion to rule that a first offense of this subsection by a person under the age of twenty-one (21) years shall be nonadjudicated. Such person shall be eligible for nonadjudication only once. The Department of Public Safety shall maintain a confidential registry of all cases which are nonadjudicated as provided in this paragraph. A judge who rules that a case is nonadjudicated shall forward such ruling to the Department of Public Safety. Judges and prosecutors involved in implied consent violations shall have access to the confidential registry for the purpose of determining nonadjudication eligibility. A record of a person who has been nonadjudicated shall be maintained for five (5) years or until such person reaches the age of twenty-one (21) years. Any person whose confidential record has been disclosed in violation of this paragraph shall have a civil cause of action against the person and/or agency responsible for such disclosure.

(4) In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of his breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall suffer an additional suspension of driving privileges as follows:

The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or permit to drive or deny the issuance of a license or permit to such person as provided for first, second and third or subsequent offenders in subsection (2) of this section. Such suspension shall be in addition to any suspension imposed pursuant to subsection (1) of Section 63-11-23. The minimum suspension imposed under this subsection shall not be



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reduced and no prosecutor is authorized to offer a reduction of such suspension as part of a plea bargain.

(5) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each such death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(6) Upon conviction of any violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The judge shall cause a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction, to be sent to the Commissioner of Public Safety. A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes



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of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

(7) Convictions in other states of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring after July 1, 1992, shall be counted for the purposes of determining if a violation of subsection (1) of this section is a first, second, third or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) For the purposes of determining how to impose the sentence for a second, third or subsequent conviction under this section, the indictment shall not be required to enumerate previous convictions. It shall only be necessary that the indictment state the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third or subsequent offense of this section.

(9) Any person under the legal age to obtain a license to operate a motor vehicle convicted under this section shall not be eligible to receive such license until the person reaches the age of eighteen (18) years.

(10) Suspension of driving privileges for any person convicted of violations of Section 63-11-30(1) shall run consecutively.

(11) The court may order the use of any ignition interlock device as provided in Section 63-11-31.

(12) A person who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of

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endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired such person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars (\$10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether such offense was a first, second, third or subsequent offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 681

Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

**SECTION 2.** Section 97-29-31, Mississippi Code of 1972, is amended as follows:

97-29-31. A person who willfully and lewdly exposes his person, or private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, is guilty of a misdemeanor and, on conviction for a first offense, shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or be imprisoned not exceeding six (6) months, or both. Upon conviction for a second offense within five (5) years, such person shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or shall be imprisoned not exceeding one (1) year, or both. Upon conviction of a third or subsequent offense within five (5) years, such person shall be guilty of a felony and shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for not more than five (5) years in the State Penitentiary, or both. It is not a violation of this statute for a woman to breast-feed.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 696

**Description:** Student grades; prohibit certain school administrators and district employees from influencing a change in.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No





*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Education
- 2 03/06 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Read the Third Time
- 4 03/15 (H) Committee Substitute Adopted
- 5 03/15 (H) Amended
- 6 03/15 (H) Passed As Amended (Vote)
- 7 03/20 (H) Transmitted To Senate
- 8 03/22 (S) Referred To Education
- 9 04/03 (S) Title Suff Do Pass As Amended
- 10 04/04 (S) Amended
- 11 04/04 (S) Passed As Amended (Vote)
- 12 04/05 (S) Returned For Concurrence
- 13 04/17 (H) Concurred in Amend From Senate (Vote)
- 14 04/19 (H) Enrolled Bill Signed
- 15 04/19 (S) Enrolled Bill Signed
- 16 04/26 Approved by Governor

**Amendments:**

-   [H] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote
-   [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 696

---- Additional Information ----

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 696

*House Committee:* Education

*Senate Committee:* Education

*Principal Author:* Moore

*Additional Authors:* Beckett, Boyd, Byrd, Carpenter, Chism, Currie, Denny, Formby, Howell, Martinson, McLeod, Monsour, Rushing, Bounds, Dixon



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 696

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Moore, Beckett, Boyd,  
Byrd, Carpenter, Chism, Currie, Denny,  
Formby, Howell, Martinson, McLeod, Monsour,  
Rushing, Bounds, Dixon

To: Education

HOUSE BILL NO. 696  
(As Sent to Governor)

AN ACT TO PROHIBIT SCHOOL ADMINISTRATORS AND CERTAIN OTHER FACULTY, STAFF AND EMPLOYEES OF A LOCAL SCHOOL DISTRICT FROM INFLUENCING THE GRADE RECEIVED BY A STUDENT FROM A TEACHER; TO PRESCRIBE THE CIRCUMSTANCES UNDER WHICH A TEACHER MAY CHANGE A STUDENT'S GRADE; TO PROVIDE THAT VIOLATIONS SHALL SUBJECT LOCAL SCHOOL DISTRICTS OR SCHOOLS TO A LOSS OF ACCREDITATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) No school board member, school

superintendent, assistant superintendent, principal, guidance counselor, other teachers, coaches, or other administrative staff members of the school or the central staff of a local school board shall attempt, directly or indirectly, to change, alter, or otherwise affect the grade received by a student from his teacher except as otherwise specifically allowed by this section.

(2) (a) A teacher's determination of a student's grade as a measure of the academic achievement or proficiency of the student shall not be altered or changed in any manner by any school official or employee other than the teacher except as provided in this subsection.

(b) A school official or employee having authority provided under formally adopted written rules and procedures adopted by the local school board to change a student's grade can take such action only upon it being determined that the grade is an error or that the grade is demonstrably inconsistent with the teacher's grading policy.

(3) Any local school district or personnel employed by the school district who violates the provisions of this act shall cause the local school district or school to be subject to losing

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 696

its accreditation in the manner determined by the policies and procedures of the State Board of Education.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 707

**Description:** School Start Date Act of 2012; enact to restrict the start of a new academic year.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority



*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Education
- 2 03/06 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Read the Third Time
- 4 03/15 (H) Committee Substitute Adopted
- 5 03/15 (H) Amended
- 6 03/15 (H) Passed As Amended {Vote}
- 7 03/15 (H) Motion to Reconsider Entered (Dixon, Moore, Clarke)
- 8 03/16 (H) Motion to Reconsider Tabled
- 9 03/20 (H) Transmitted To Senate
- 10 03/28 (S) Referred To Education
- 11 04/03 (S) Title Suff Do Pass As Amended
- 12 04/10 (S) Amended
- 13 04/10 (S) Passed As Amended {Vote}
- 14 04/11 (S) Returned For Concurrence
- 15 04/23 (H) Concurred in Amend From Senate {Vote}
- 16 04/25 (H) Enrolled Bill Signed
- 17 04/25 (S) Enrolled Bill Signed
- 18 05/01 Approved by Governor

**Amendments:**

  [H] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 707

----- Additional Information -----

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 707

*House Committee:* Education

*Senate Committee:* Education

*Principal Author:* Formby

*Additional Authors:* Moore, Bounds, Dixon

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 707

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Formby, Moore, Bounds,  
Dixon

To: Education

HOUSE BILL NO. 707  
(As Sent to Governor)

AN ACT TO CREATE THE SCHOOL START DATE ACT; TO PROVIDE THAT ALL PUBLIC ELEMENTARY OR SECONDARY SCHOOLS UNDER THE JURISDICTION OF THE STATE BOARD OF EDUCATION SHALL BEGIN THE NEW ACADEMIC SCHOOL YEAR OF INSTRUCTION ON OR AFTER THE THIRD MONDAY IN AUGUST; TO EXEMPT THE MISSISSIPPI SCHOOLS FOR THE BLIND AND DEAF FROM THE APPLICATION OF THIS REQUIREMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) This section shall be known and may be cited as the School Start Date Act.

(2) Beginning with the 2014-2015 school year, all public elementary or secondary schools under the jurisdiction of the State Board of Education shall begin the new academic year of instruction for students on or after the third Monday in August.

(3) The provisions of subsection (2) of this section shall not apply to the Mississippi School for the Blind and the Mississippi School for the Deaf.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 730

**Description:** Controlled Substances Law; add certain substance to Schedule I.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No







*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Judiciary B
- 2 02/23 (H) Title Suff Do Pass
- 3 03/08 (H) Passed {Vote}
- 4 03/09 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Judiciary, Division B
- 6 04/03 (S) Title Suff Do Pass As Amended
- 7 04/11 (S) Amended
- 8 04/11 (S) Passed As Amended {Vote}
- 9 04/12 (S) Returned For Concurrence
- 10 04/19 (H) Concurred in Amend From Senate {Vote}
- 11 04/24 (H) Enrolled Bill Signed
- 12 04/24 (S) Enrolled Bill Signed
- 13 05/01 Approved by Governor

**Amendments:**

-   [S] Committee Amendment No 1 **Adopted** Voice Vote
-   [S] Amendment No 1 to Committee Amendment No 1 **Adopted** Voice Vote
-   Amendment Report for House Bill No. 730

**Code Section:** A 041-0029-0113

---- Additional Information ----

**House Committee:** Judiciary B

**Senate Committee:** Judiciary, Division B

**2012 GENERAL LAWS OF MISSISSIPPI, HB 730**

*Principal Author:* Mims

*Additional Authors:* Rushing

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 730

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Mims, Rushing

To: Judiciary B

HOUSE BILL NO. 730  
(As Sent to Governor)

AN ACT TO AMEND SECTION 41-29-113, MISSISSIPPI CODE OF 1972, TO ADD "5-MEO-DMT" TO SCHEDULE 1 (HALLUCINOGENIC SUBSTANCES) UNDER THE UNIFORM CONTROLLED SUBSTANCES LAW AND TO REVISE THE CHEMICAL DESIGNATION OF VARIOUS SYNTHETIC CANNABINOIDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 41-29-113, Mississippi Code of 1972, is amended as follows:

41-29-113. The controlled substances listed in this section are included in Schedule I.

### SCHEDULE I

(a) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl;
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol, except levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl;
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl;

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- (12) Beta-hydroxy-3-methylfentanyl;
  - (13) Betameprodine;
  - (14) Betamethadol;
  - (15) Betaprodine;
  - (16) Clonitazene;
  - (17) Dextromoramide;
  - (18) Diampromide;
  - (19) Diethylthiambutene;
  - (20) Difenoxin;
  - (21) Dimenoxadol;
  - (22) Dimepheptanol;
  - (23) Dimethylthiambutene;
  - (24) Dioxaphetyl butyrate;
  - (25) Dipipanone;
  - (26) Ethylmethylthiambutene;
  - (27) Etonitazene;
  - (28) Etoxeridine;
  - (29) Furethidine;
  - (30) Hydroxypethidine;
  - (31) Ketobemidone;
  - (32) Levomoramide;
  - (33) Levophenacylmorphane;
  - (34) 3-methylfentanyl;
  - (35) 3-methylthiofentanyl;
  - (36) Morpheridine;
  - (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
  - (38) Noracymethadol;
  - (39) Norlevorphanol;
  - (40) Normethadone;
  - (41) Norpipanone;
  - (42) Para-fluorofentanyl;
  - (43) PEPAP
- (1-(-2-phenylethyl)-4-phenyl-4-acetoxypiperidine);

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- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl;
- (54) Tilidine;
- (55) Trimeperidine.

(b) **Opiate derivatives.** Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine; (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Monoacetylmorphine;
- (16) Morphine methylbromide;



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- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine;
- (24) Thebacon.

(c) **Hallucinogenic substances.** Any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric) and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (4) 2,5-dimethoxy-4(n) propylthiophenethylamine (2C-T-7);
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) 3,4,5-trimethoxy amphetamine;
- (7) Alpha-methyltryptamine (Also known as AMT);
- (8) Bufotenine;
- (9) Diethyltryptamine;
- (10) Dimethyltryptamine;
- (11) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
- (12) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
- (13) Alpha-ethyltryptamine;
- (14) 4-methyl-2,5-dimethoxyamphetamine;
- (15) Hashish;
- (16) Ibogaine;
- (17) Lysergic acid diethylamide (LSD);

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- (18) Marihuana;
- (19) Mescaline;
- (20) Peyote;
- (21) N-ethyl-3-piperidyl benzilate;
- (22) N-methyl-3-piperidyl benzilate;
- (23) Phencyclidine;
- (24) Psilocybin;
- (25) Psilocyn;
- (26) Tetrahydrocannabinols, meaning

tetrahydrocannabinols contained in a plant of the genus Cannabis (cannabis plant), as well as the synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant such as the following:

- (A) -1 cis or trans tetrahydrocannabinol;
- (B) -6 cis or trans tetrahydrocannabinol;
- (C) -3,4 cis or trans tetrahydrocannabinol.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of atomic positions are covered.)

("Tetrahydrocannabinols" excludes dronabinol and nabilone.)

However, the following products are exempted from control: THC-containing industrial products (e.g., (i) paper, rope and clothing made from cannabis stalks); (ii) processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope; (iii) animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formula designed, marketed and distributed for nonhuman consumption; and (iv) personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 730

lotions (provided that such products do not cause THC to enter the human body);

(27) 2,5-dimethoxyamphetamine;

(28) 4-bromo-2,5-dimethoxyamphetamine;

(29) 4-bromo-2,5-dimethoxyphenylethylamine;

(30) 4-methoxyamphetamine;

(31) Ethylamine analog of phencyclidine (PCE);

(32) Pyrrolidine analog of phencyclidine (PHP, PCPy);

(33) Thiophene analog of phencyclidine;

(34) Parahexyl;

(35) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine (TCPy);

(36) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenylethylamine, N-ethyl MDA, MDE, MDEA);

(37) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylethylamine);

(38) Salvia divinorum;

(39) Synthetic cannabinoids:

(A) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(B) Naphthoylindoles and naphthylmethylindoles, being any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane \* \* \*, whether or not \* \* \* substituted in the indole ring to any extent, \* \* \* or \* \* \* in the naphthyl ring to any extent \* \* \*;

(C) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl)pyrrole \* \* \*, whether or not \* \* \* substituted in the pyrrole ring to any extent, \* \* \* or \* \* \* in the naphthyl ring to any extent;

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(D) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl)indene \* \* \*, whether or not \* \* \* substituted in the indene ring to any extent \* \* \* or \* \* \* in the naphthyl ring to any extent;

(E) Phenylacetylindoles, being any compound structurally derived from 3-phenylacetylindole \* \* \*, whether or not \* \* \* substituted in the indole ring to any extent \* \* \* or \* \* \* in the phenyl ring to any extent \* \* \*;

(F) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol \* \* \*, whether or not substituted in the cyclohexyl ring to any extent \* \* \* or in the phenolic ring to any extent;

(G) Benzoylindoles, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(H) Adamantoylindoles, whether or not substituted in the indole ring to any extent or in the adamantoyl ring system to any extent;

(I) Tetrahydro derivatives of cannabiniol and 3-alkyl homologues of cannabiniol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin.

(d) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone;

(3) Methaqualone.

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(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following central nervous system stimulants including optical salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

- (1) Aminorex;
- (2) N-benzylpiperazine (also known as BZP;  
1-benzylpiperazine);
- (3) Fenethylamine;
- (4) N-ethyl-amphetamine;
- (5) 4-methylaminorex (also known as  
2-amino-4-methyl-5-phenyl-2-oxazoline);
- (6) Any material, compound, mixture or preparation which contains any quantity of N,N-dimethylamphetamine. (Other names include: N,N,-alpha-trimethyl-benzeneethanamine, and N,N-alphatrimethylphenethylamine);
- (7) Cathinone, methcathinone, 4-methylmethcathinone (mephedrone), methylenedioxypyrovalerone (MDPV), and, unless listed in another schedule, any compound other than bupropion that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification in any of the following ways:
  - (i) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;
  - (ii) By substitution at the 3-position with an alkyl substituent;
  - (iii) By substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 747

**Description:** Forest acreage tax; delete repeal date on requirement that boards of supervisors levy.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* June 30, 2012

**History of Actions:**

- 1 02/20 (H) Referred To County Affairs
- 2 02/28 (H) Title Suff Do Pass
- 3 03/08 (H) Passed (Vote)
- 4 03/09 (H) Transmitted To Senate
- 5 03/19 (S) Referred To Finance
- 6 03/29 (S) Title Suff Do Pass As Amended
- 7 04/04 (S) Amended
- 8 04/04 (S) Passed As Amended (Vote)
- 9 04/05 (S) Returned For Concurrence
- 10 04/10 (H) Concurred in Amend From Senate (Vote)
- 11 04/13 (H) Enrolled Bill Signed
- 12 04/13 (S) Enrolled Bill Signed
- 13 04/19 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 747

**Code Section:** A 049-0019-0115

---- Additional Information ----

**House Committee:** County Affairs

**Senate Committee:** Finance

2012 GENERAL LAWS OF MISSISSIPPI, HB 747

*Principal Author:* Formby

# 2012 GENERAL LAWS OF MISSISSIPPI, HB 747

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Formby

To: County Affairs

HOUSE BILL NO. 747  
(As Sent to Governor)

AN ACT TO AMEND SECTION 49-19-115, MISSISSIPPI CODE OF 1972, TO EXTEND UNTIL JULY 1, 2016, THE REPEAL DATE ON THE PROVISION OF LAW THAT REQUIRES THE BOARDS OF SUPERVISORS OF COUNTIES TO LEVY THE FOREST ACREAGE TAX; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 49-19-115, Mississippi Code of 1972, is amended as follows:

49-19-115. (1) The board of supervisors of all counties are hereby directed to levy a special tax to be known as "the forest acreage tax." Such tax shall be Two Cents (2¢) per acre on all timbered and uncultivable lands in the county in order to receive the financial and supervisory cooperation of the State Forestry Commission in carrying out organized forest fire control and other provisions of Sections 49-19-111 through 49-19-117.

(2) In addition to the tax levied under subsection (1) of this section, the board of supervisors of all counties are hereby directed to levy an additional forest acreage tax on all timbered and uncultivable lands in the county beginning October 1, 1989, and continuing for three (3) succeeding years in the following amounts:

	Total Acreage	
	Increase	Tax
Fiscal year ending		
September 30, 1990.....	3¢ per acre	5¢ per acre
Fiscal year ending		
September 30, 1991.....	2¢ per acre	7¢ per acre
Fiscal year ending		
September 30, 1992.....	2¢ per acre	9¢ per acre

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 747

Upon completion of the third year, the total acreage tax shall remain at the Nine Cents (9¢) per acre per year.

(3) Uncultivable lands shall not include bogs, unreclaimed strip mine areas, coastal beach sands, tidal and freshwater marshes, beaver ponds and flood or flowage easements.

(4) Those homeowners described in Section 27-33-67(2), who qualify for the exemptions allowed in Article 1, Chapter 33, Title 27, Mississippi Code of 1972, shall be exempt from any forest acreage tax levied pursuant to this section.

(5) The provisions of this section and the tax levy required herein shall not be applicable to any counties which were not levying such forest acreage tax on January 1, 1989.

(6) This section shall be repealed on June 30, 2016.

**SECTION 2.** This act shall take effect and be in force from and after June 30, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 750

**Description:** Ad valorem tax; delete repeal date on authority of local governing authorities to grant exemption for motor vehicles of certain active duty military personnel.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Ways and Means
- 2 02/29 (H) Title Suff Do Pass
- 3 03/06 (H) Passed {Vote}
- 4 03/07 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Veterans and Military Affairs;Finance
- 6 03/27 (S) DR - TSDP: VM To FI
- 7 03/29 (S) DR - TSDPAA: FI To VM
- 8 04/02 (S) Title Suff Do Pass As Amended
- 9 04/10 (S) Amended
- 10 04/10 (S) Passed As Amended {Vote}
- 11 04/11 (S) Returned For Concurrence
- 12 04/12 (H) Concurred in Amend From Senate {Vote}
- 13 04/17 (H) Enrolled Bill Signed
- 14 04/17 (S) Enrolled Bill Signed
- 15 04/23 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 750

**Code Section:** A 027-0051-0042.3

----- Additional Information -----

**House Committee:** Ways and Means



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 750

*Senate Committee:* Veterans and Military Affairs, Finance

*Principal Author:* Formby

*Additional Authors:* Reynolds, Haney, Crawford, DeBar, Bennett, Eure, Jennings, Hamilton, Rogers  
(61st)

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 750

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Formby, Reynolds, Haney, To: Ways and Means  
Crawford, DeBar, Bennett, Eure, Jennings,  
Hamilton, Rogers (61st)

HOUSE BILL NO. 750  
(As Sent to Governor)

AN ACT TO AMEND SECTION 27-51-42.3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF SUPERVISORS OF ANY COUNTY AND THE GOVERNING AUTHORITIES OF ANY MUNICIPALITY TO GRANT AN EXEMPTION FROM AD VALOREM TAXES, EXCEPT TAXES FOR SCHOOL DISTRICT PURPOSES, ON MOTOR VEHICLES OWNED BY RESIDENTS OF THIS STATE WHO ARE SERVING ON ACTIVE DUTY AND RECEIVING SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE OR IMMINENT DANGER UNDER 37 USC 310; TO EXTEND UNTIL SEPTEMBER 30, 2015, THE REPEAL DATE ON THIS SECTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 27-51-42.3, Mississippi Code of 1972, is amended as follows:

27-51-42.3. (1) The board of supervisors of any county and the governing authorities of any municipality, in the discretion of the board or governing authorities, by order duly adopted and entered upon their respective official minutes, may grant an exemption from motor vehicle ad valorem taxes levied by the county or levied by the municipality, as the case may be, as specified in subsection (2) of this section on one (1) motor vehicle owned by a resident of this state who, as a member of the Mississippi National Guard, as a member of the Armed Forces of the United States or as a member of any reserve component of the Armed Forces of the United States is serving on active duty and receiving special pay for duty subject to hostile fire or imminent danger under 37 USC 310.

(2) (a) A board of supervisors may grant an exemption from all county ad valorem taxes, except ad valorem taxes for school district purposes, in the amount of the lesser of One Hundred Dollars (\$100.00) or the amount of ad valorem taxes due on one (1) vehicle for eligible Mississippi active duty service members as

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 750

set forth in subsection (1) of this section for the license tag registration year or portion of year during which the military service described under subsection (1) of this section is being performed.

(b) The governing authorities of a municipality may grant an exemption from all municipal ad valorem taxes, except ad valorem taxes for school district purposes, in the amount of the lesser of Fifty Dollars (\$50.00) or the amount of ad valorem taxes due on one (1) vehicle for eligible Mississippi active duty service members as set forth in subsection (1) of this section for the license tag registration year or portion of year during which the military service described under subsection (1) of this section is being performed.

(3) Upon application to the tax collector for issuance of a motor vehicle license tag and/or decals, any person wishing to be granted the exemption under the provisions of this section shall present to the tax collector a copy of his military orders and a form prescribed by the Department of Revenue establishing his right to such exemption, and the applicant shall be entitled to an exemption from county and/or municipal motor vehicle ad valorem taxes in the amount provided for under subsection (2) of this section if the board of supervisors of the county or the governing authorities of the municipality have authorized such exemption.

(4) The Department of Revenue shall adopt and promulgate such rules and regulations as may be necessary to administer and implement the provisions of this section.

(5) This section shall stand repealed from and after September 30, 2015.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 780

**Description:** Domestic violence; clarify and revise venue and jurisdiction.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority



*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Judiciary B
- 2 03/06 (H) Title Suff Do Pass Comm Sub
- 3 03/09 (H) Committee Substitute Adopted
- 4 03/09 (H) Amended
- 5 03/09 (H) Passed As Amended {Vote}
- 6 03/13 (H) Transmitted To Senate
- 7 03/15 (S) Referred To Judiciary, Division B
- 8 04/03 (S) Title Suff Do Pass As Amended
- 9 04/05 (S) Amended
- 10 04/05 (S) Passed As Amended {Vote}
- 11 04/10 (S) Returned For Concurrence
- 12 04/19 (H) Concurred in Amend From Senate {Vote}
- 13 04/24 (H) Enrolled Bill Signed
- 14 04/24 (S) Enrolled Bill Signed
- 15 05/01 Approved by Governor

**Amendments:**

  [H] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 780

**Code Section:** A 093-0021-0005, A 093-0021-0007, A 093-0021-0013, A 093-0021-0015, A 093-0021-0021, A 093-0021-0025, A 093-0022-0009, A 097-0003-0007, A 099-0003-0007, A 099-0005-0037, A 099-0005-0011, A 099-0015-0026

2012 GENERAL LAWS OF MISSISSIPPI, HB 780

----- Additional Information -----

*House Committee:* Judiciary B

*Senate Committee:* Judiciary, Division B

*Principal Author:* Buck (72nd)



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 780

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Buck (72nd)

To: Judiciary B

HOUSE BILL NO. 780  
(As Sent to Governor)

AN ACT TO AMEND SECTION 93-21-5, MISSISSIPPI CODE OF 1972, TO REVISE VENUE OF A DOMESTIC ABUSE PETITION; TO AMEND SECTION 93-21-7, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE JURISDICTION OF DOMESTIC ABUSE PETITIONS; TO AMEND SECTION 93-21-13, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE USE OF STANDARDIZED FORMS FOR EMERGENCY DOMESTIC ABUSE PROTECTION ORDERS AND THE ENTRY OF SUCH ORDERS INTO THE PROTECTION ORDER REGISTRY; TO AMEND SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE USE OF STANDARDIZED FORMS FOR DOMESTIC ABUSE PROTECTION ORDERS AND TO REVISE ENTRY OF ORDERS IN THE PROTECTION ORDER REGISTRY; TO AMEND SECTION 93-21-21, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE IMPOSITION OF SANCTIONS, WHETHER CIVIL OR CRIMINAL, FOR A KNOWING VIOLATION OF A PROTECTION ORDER; TO AMEND SECTIONS 93-21-25 AND 93-22-9, MISSISSIPPI CODE OF 1972, TO REVISE THE DUTY OF ENTERING INFORMATION INTO THE PROTECTION ORDER REGISTRY AND THE EFFECT OF REGISTERING OR NOT REGISTERING FOREIGN ORDERS; TO AMEND SECTIONS 97-3-7 AND 99-3-7, MISSISSIPPI CODE OF 1972, TO CLARIFY THE RELATIONSHIPS TRIGGERING DOMESTIC VIOLENCE DESIGNATION FOR SIMPLE AND AGGRAVATED ASSAULT; TO AMEND SECTION 99-5-37, MISSISSIPPI CODE OF 1972, TO CLARIFY WHAT ACTS OF DOMESTIC VIOLENCE REQUIRE PERSONAL APPEARANCE BEFORE A JUDGE BEFORE BAIL IS SET AND TO REQUIRE THAT BOND CONDITIONS IMPOSED ARE ENTERED INTO THE CORRESPONDING OFFENSE REPORT; TO AMEND SECTION 99-5-11, MISSISSIPPI CODE OF 1972, TO REQUIRE JUDGES TO CHECK THE ATTORNEY GENERAL'S PROTECTIVE ORDER REGISTRY BEFORE GRANTING BAIL ON CERTAIN OTHER CHARGES; TO AMEND SECTION 99-15-26, MISSISSIPPI CODE OF 1972, TO PROVIDE A PRETRIAL DIVERSION FOR COUNSELING OPTION IN CERTAIN DOMESTIC ABUSE PROSECUTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 93-21-5, Mississippi Code of 1972, is amended as follows:

93-21-5. (1) The municipal justice, county or chancery court shall have jurisdiction over proceedings under this chapter as provided in this chapter. The petitioner's right to relief under this chapter shall not be affected by his leaving the residence or household to avoid further abuse.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 780

(2) Venue shall be proper in any county or municipality where the respondent resides or in any county or municipality where the alleged abusive act or acts occurred.

(3) If a petition for an order for protection from domestic abuse is filed in a court lacking proper venue, the court, upon objection of the respondent, shall transfer the action to the appropriate venue pursuant to other applicable law.

(4) A record shall be made of any proceeding in justice or municipal court that involves domestic abuse.

**SECTION 2.** Section 93-21-7, Mississippi Code of 1972, is amended as follows:

93-21-7. (1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is filed in order to provide for expedited proceedings.

(2) A petition seeking a domestic abuse protection order may be filed in any of the following courts: municipal, justice, county or chancery. A chancery court shall not prohibit the filing of a petition which does not seek emergency relief on the basis that the petitioner did not first seek or obtain temporary relief in another court. A petition requesting emergency relief pending a hearing shall not be filed in \* \* \* chancery court unless specifically permitted by the chancellor under the circumstances or as a separate pleading in an ongoing chancery action between the parties. Nothing in this section shall:

(a) Be construed to require consideration of emergency relief by a chancery court; or

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 780

(b) Preclude a chancery court from entering an order of emergency relief.

(3) The petitioner in any action brought pursuant to this chapter shall not bear the costs associated with its filing or the costs associated with the issuance or service of any notice of a hearing to the respondent, issuance or service of an order of protection on the respondent, or issuance or service of a warrant or witness subpoena. If the court finds that the petitioner is entitled to an order protecting the petitioner from abuse, the court shall be authorized to assess all costs including attorney's fees of the proceedings to the respondent. The court may assess costs including attorney's fees to the petitioner only if the allegations of abuse are determined to be without merit and the court finds that the petitioner is not a victim of abuse as defined by Section 93-21-3.

\* \* \*

**SECTION 3.** Section 93-21-13, Mississippi Code of 1972, is amended as follows:

93-21-13. (1) (a) The \* \* \* court in which a petition seeking emergency relief pending a hearing is filed must consider all such requests in an expedited manner. The court may issue an emergency domestic abuse protection order without prior notice to the respondent upon good cause shown by the petitioner. Immediate and present danger of abuse to the petitioner, any minor children or any person alleged to be incompetent shall constitute good cause for issuance of an emergency domestic abuse protection order. The respondent shall be provided with notice of the entry of any emergency domestic abuse protection order issued by the court by personal service of process.

(b) A court granting an emergency domestic abuse protection order may grant relief as provided in Section 93-21-15(1)(a).

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(c) An emergency domestic abuse protection order shall be effective for ten (10) days, or until a hearing may be held, whichever occurs first. If a hearing under this subsection (1) is continued, the court may grant or extend the emergency order as it deems necessary for the protection of the abused person. A continuance under this subsection (1)(c) shall be valid for no longer than twenty (20) days.

(2) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for emergency domestic abuse protection orders. Use of the standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(3) Upon issuance of any protection order by the court, the order shall be entered into the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy provided to the sheriff's department in the county of the court of issuance.

(4) Any person aggrieved by the decision of a municipal or justice court judge to issue an emergency domestic abuse protection order or to deny issuance of an emergency domestic protection order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing.

\* \* \*

**SECTION 4.** Section 93-21-15, Mississippi Code of 1972, is amended as follows:

93-21-15. (1) (a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the



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petitioner has proved the existence of abuse by a preponderance of the evidence, the municipal and justice courts shall be empowered to grant a temporary domestic abuse protection order to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. The relief the court may provide includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Prohibiting or limiting respondent's physical proximity to the abused or other household members as designated by the court, including residence and place of work;

(iii) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court, whether in person, by telephone or by other electronic communication;

(iv) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both; or

(v) Prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

(b) The duration of any temporary domestic abuse protection order issued by a municipal or justice court shall not exceed thirty (30) days.

(c) Any person aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order or to deny such an order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing.



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(2) (a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. In granting a final domestic abuse protection order, the chancery or county court may provide for relief that includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both;

(iii) When the respondent has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both, or by consent agreement allowing the respondent to provide suitable, alternate housing;

(iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both;

(v) If the respondent is legally obligated to support the petitioner, any minor children, or any person alleged to be incompetent, ordering the respondent to pay temporary

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support for the petitioner, any minor children, or any person alleged to be incompetent;

(vi) Ordering the respondent to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, or any combination of the above;

(vii) Prohibiting the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(viii) Prohibiting or limiting respondent's physical proximity to the abused or other household members designated by the court, including residence, school and place of work;

(ix) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court whether in person, by telephone or by electronic communication; and

(x) Ordering counseling or professional medical treatment for the respondent, including counseling or treatment designed to bring about the cessation of domestic abuse.

(b) Except as provided below, a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate. The expiration date of the order shall be clearly stated in the order.

(c) Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days. A party seeking relief beyond that period must initiate appropriate proceedings in the chancery court of appropriate jurisdiction. If

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at the end of the one-hundred-eighty-day period, neither party has initiated such proceedings, the custody, visitation or support of minor children will revert to the chancery court order addressing such terms that was in effect at the time the domestic abuse protection order was granted. The chancery court in which custody, visitation or support proceedings have been initiated may provide for any temporary provisions addressing custody, visitation or support as the court deems appropriate.

(3) Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by an independent petition by each party requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

(4) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for temporary and final domestic abuse protection orders. The use of standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(5) Upon issuance of any protection order by the court, the order shall be entered in the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy shall be provided to the sheriff's department in the county of the court of issuance.

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(6) Upon subsequent petition by either party and following a hearing of which both parties have received notice and an opportunity to be heard, the court may modify, amend, or dissolve a domestic abuse protection order previously issued by that court.

**SECTION 5.** Section 93-21-21, Mississippi Code of 1972, is amended as follows:

93-21-21. (1) Upon a knowing violation of (a) a protection order or court-approved consent agreement issued pursuant to this chapter, (b) a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse, or (c) a bond condition imposed pursuant to Section 99-5-37, the person violating the order or condition commits a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(2) Alternatively, upon a knowing violation of a protection order or court-approved consent agreement issued pursuant to this chapter or a bond condition issued pursuant to Section 99-5-37, the issuing court may hold the person violating the order or bond condition in contempt, the contempt to be punishable as otherwise provided by applicable law. A person shall not be both convicted of a misdemeanor and held in contempt for the same violation of an order or bond condition. \* \* \*

(3) When investigating allegations of a violation under subsection (1) of this section, law enforcement officers shall utilize the uniform offense report prescribed for this purpose by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (1) of this section.

(4) In any conviction for a violation of a domestic abuse protection order as described in subsection (1) of this section,



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the court shall enter the disposition of the matter into the corresponding uniform offense report.

(5) Nothing in this section shall be construed to interfere with the court's authority, if any, to address bond condition violations in a more restrictive manner.

**SECTION 6.** Section 93-21-25, Mississippi Code of 1972, is amended as follows:

93-21-25. (1) In order to provide a statewide registry for protection orders and to aid law enforcement, prosecutors and courts in handling such matters, the Attorney General is authorized to create and administer a Mississippi Protection Order Registry. The Attorney General's office shall implement policies and procedures governing access to the registry by authorized users, which shall include provisions addressing the confidentiality of any information which may tend to reveal the location or identity of a victim of domestic abuse.

(2) All orders issued pursuant to this chapter will be maintained in the Mississippi Protection Order Registry. It shall be the duty of the clerk of the issuing court to enter all domestic abuse protection orders, including any modifications, amendments or dismissals of such orders, into the Mississippi Protection Order Registry within twenty-four (24) hours of issuance with no exceptions for weekends or holidays. A separate copy of any order shall be provided to the sheriff's department of the county of the issuing court. The copy may be provided in electronic format. Each qualifying protection order submitted to the Mississippi Protection Order Registry shall be automatically transmitted to the National Criminal Information Center Protection Order File. Failure of the clerk to enter the order into the registry or to provide a copy of the order to law enforcement shall have no effect on the validity or enforcement of an otherwise valid protection order.

\* \* \*



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\* \* \* Any information regarding the registration of a domestic violence protection order, the filing of a petition for a domestic violence protection order, or the issuance of a domestic violence protection order which is maintained in the Mississippi Protection Order Registry which would tend to reveal the identity or location of the protected person(s) shall not constitute a public record and shall be exempt from disclosure pursuant to the Mississippi Public Records Act of 1983. This information may be disclosed to appropriate law enforcement, prosecutors or courts for protection order enforcement purposes.

**SECTION 7.** Section 93-22-9, Mississippi Code of 1972, is amended as follows:

93-22-9. (1) It is not required that any foreign protection order be registered in Mississippi; however, any individual may register a foreign protection order in this state on behalf of the individual or any protected person. To register a foreign protection order, an individual shall \* \* \* present a certified copy of the order to the chancery clerk's office of any county in this state. \* \* \*

\* \* \*

(2) Upon presentation of a protection order, the chancery clerk shall enter the order into the Mississippi Domestic Abuse Protection Order Registry as provided in Section 93-21-25. \* \* \*

\* \* \*

(3) At the time of registration, an individual registering a foreign protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is in effect at the time of the registration.

\* \* \*

(4) The failure to register a foreign protection order pursuant to the provisions of this section shall have no effect on the validity or enforceability of the order by Mississippi law enforcement or courts.

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**SECTION 8.** Section 97-3-7, Mississippi Code of 1972, is amended as follows:

97-3-7. (1) (a) A person is guilty of simple assault if he (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; (ii) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) attempts by physical menace to put another in fear of imminent serious bodily harm; and, upon conviction, he shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

(b) However, a person convicted of simple assault (i) upon a statewide elected official, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker or family protection specialist or family protection worker employed by the Department of Human Services or another agency, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, or a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of the Supreme Court, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender, while such statewide elected official, judge or justice, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district

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attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment; (ii) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or (iii) upon a person who is sixty-five (65) years of age or older or a person who is a vulnerable adult, as defined in Section 43-47-5, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both.

(2) (a) A person is guilty of aggravated assault if he (i) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (iii) causes any injury to a child who is in the process of boarding or exiting a school bus in the course of a violation of Section 63-3-615; and, upon conviction, he shall be punished by imprisonment in the county jail for not more than one (1) year or in the Penitentiary for not more than twenty (20) years.

(b) However, a person convicted of aggravated assault (i) upon a statewide elected official, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker employed by the Department of Human Services or another agency, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, or a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of

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the Court of Appeals or a justice of the Supreme Court, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender, while such statewide elected official, judge or justice, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment; (ii) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or (iii) upon a person who is sixty-five (65) years of age or older or a person who is a vulnerable adult, as defined in Section 43-47-5, shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(3) A person is guilty of simple domestic violence who commits simple assault as described in subsection (1) of this section against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and, upon conviction, the defendant shall be punished as provided under



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subsection (1) of this section; however, upon a third or subsequent conviction of simple domestic violence, whether against the same or another victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years. In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

(4) A person is guilty of aggravated domestic violence who commits aggravated assault as described in subsection (2) of this section against, or who strangles, or attempts to strangle, a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child. Upon conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for not less than two (2) years nor more than twenty (20) years; however, upon a third or subsequent conviction of aggravated domestic violence, whether against the same or another victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment of not less than ten (10) nor more than twenty (20) years. In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where



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the offense occurred. Reasonable discipline of a child, such as spanking, is not an offense under this subsection (4). A person convicted of aggravated domestic violence shall not be eligible for parole under the provisions of Section 47-7-3(1)(c) until he shall have served one (1) year of his sentence.

For the purposes of this section, "strangle" means to restrict the flow of oxygen or blood by intentionally applying pressure on the neck or throat of another person by any means or to intentionally block the nose or mouth of another person by any means.

(5) "Dating relationship" means a social relationship as defined in Section 93-21-3.

(6) Every conviction of domestic violence may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

(7) When investigating allegations of a violation of subsection (3) or (4) of this section, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (3) or (4) of this section.

(8) In any conviction of assault as described in any subsection of this section which arises from an incident of domestic violence, the sentencing order shall include the designation "domestic violence." The court clerk shall enter the disposition of the matter into the corresponding uniform offense report.

**SECTION 9.** Section 99-3-7, Mississippi Code of 1972, is amended as follows:

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99-3-7. (1) An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense, or is arrested on pursuit.

(2) Any law enforcement officer may arrest any person on a misdemeanor charge without having a warrant in his possession when a warrant is in fact outstanding for that person's arrest and the officer has knowledge through official channels that the warrant is outstanding for that person's arrest. In all such cases, the officer making the arrest must inform such person at the time of the arrest the object and cause therefor. If the person arrested so requests, the warrant shall be shown to him as soon as practicable.

(3) (a) Any law enforcement officer shall arrest a person with or without a warrant when he has probable cause to believe that the person has, within twenty-four (24) hours of such arrest, knowingly committed a misdemeanor which is an act of domestic violence or knowingly violated provisions of an ex parte protective order, protective order after hearing or court-approved consent agreement entered by a chancery, circuit, county, justice or municipal court pursuant to the Protection from Domestic Abuse Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972, or a restraining order entered by a foreign court of competent jurisdiction to protect an applicant from domestic violence \* \* \*.

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(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor which is an act of domestic violence as defined herein, or if two (2) or more persons make complaints to the officer, the officer shall attempt to determine who was the principal aggressor. The term principal aggressor is defined as the party who poses the most serious ongoing threat, or who is the most significant, rather than the first, aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the principal aggressor. If the officer affirmatively finds more than one (1) principal aggressor was involved, the officer shall document those findings.

(c) To determine who is the principal aggressor, the officer shall consider the following factors, although such consideration is not limited to these factors:

(i) Evidence from the persons involved in the domestic abuse;

(ii) The history of domestic abuse between the parties, the likelihood of future injury to each person, and the intent of the law to protect victims of domestic violence from continuing abuse;

(iii) Whether one (1) of the persons acted in self-defense; and

(iv) Evidence from witnesses of the domestic violence.

(d) A law enforcement officer shall not base the decision of whether to arrest on the consent or request of the victim.

(e) A law enforcement officer's determination regarding the existence of probable cause or the lack of probable cause shall not adversely affect the right of any party to independently seek appropriate remedies.

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(4) (a) Any person authorized by a court of law to supervise or monitor a convicted offender who is under an intensive supervision program may arrest the offender when the offender is in violation of the terms or conditions of the intensive supervision program, without having a warrant, provided that the person making the arrest has been trained at the Law Enforcement Officers Training Academy established under Section 45-5-1 et seq., or at a course approved by the Board on Law Enforcement Officer Standards and Training.

(b) For the purposes of this subsection, the term "intensive supervision program" means an intensive supervision program of the Department of Corrections as described in Section 47-5-1001 et seq., or any similar program authorized by a court for offenders who are not under jurisdiction of the Department of Corrections.

(5) As used in subsection (3) of this section, the phrase "misdemeanor which is an act of domestic violence" shall mean one or more of the following acts between current or former spouses or a child of current or former spouses, persons living as spouses or who formerly lived as spouses or a child of persons living as spouses or who formerly lived as spouses, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, persons who have a current or former dating relationship, or persons who have a biological or legally adopted child together:

(a) Simple domestic violence within the meaning of Section 97-3-7;

(b) Disturbing the family or public peace within the meaning of Section 97-35-9, 97-35-11, 97-35-13 or 97-35-15; or

(c) Stalking within the meaning of Section 97-3-107.

(6) Any arrest made pursuant to subsection (3) of this section shall be designated as domestic assault or domestic violence on both the arrest docket and the incident report. Any officer investigating a complaint of a misdemeanor crime of



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domestic violence who finds probable cause that such an offense has occurred within the past twenty-four (24) hours shall file an affidavit on behalf of the victim(s) of the crime, regardless of whether an arrest is made within that time period. If the crime is reported or investigated outside of that twenty-four-hour period, the officer may file the affidavit on behalf of the victim. In the event the officer does not file an affidavit on behalf of the victim, the officer shall instruct the victim of the procedure for filing on his or her own behalf.

(7) A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause and in good faith pursuant to subsection (3) of this section, or failure, in good faith, to make an arrest pursuant to subsection (3) of this section.

**SECTION 10.** Section 99-5-37, Mississippi Code of 1972, is amended as follows:

99-5-37. (1) In any arrest for (a) a misdemeanor that is an act of domestic violence as defined in Section 99-3-7(5); (b) aggravated domestic violence as defined in Section 97-3-7(4); (c) aggravated stalking as defined in Section 97-3-107(2); (d) a knowing violation of a condition of bond imposed pursuant to this section; or (e) a knowing violation of a domestic abuse protection order issued pursuant to Section 93-21-1 et seq., or a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse, no bail shall be granted until the person arrested has appeared before a judge of the court of competent jurisdiction. \* \* \* The appearance may be by telephone. Nothing in this section shall be construed to interfere with the defendant's right to an initial appearance or preliminary hearing.

(2) Upon setting bail \* \* \*, the judge may impose on the arrested person a holding period not to exceed twenty-four (24) hours from the time of the initial appearance or setting of bail.



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The judge also shall give particular consideration to the exigencies of the case, including, but not limited to, (a) the potential for further violence; (b) the past history, if any, of violence between the defendant and alleged victim; (c) the level of violence of the instant offense; (d) any threats of further violence; and (e) the existence of a domestic violence protection order prohibiting the defendant from engaging in abusive behavior, and shall impose any specific conditions on the bond as he or she may deem necessary. Specific conditions which may be imposed by the judge may include, but are not limited to, the issuance of an order prohibiting the defendant from contacting the alleged victim prior to trial, prohibiting the defendant from abusing or threatening the alleged victim or requiring defendant to refrain from drug or alcohol use.

(3) All bond conditions imposed by the court shall be entered into the corresponding Uniform Offense Report and written notice of the conditions shall be provided at no cost to the arrested person upon his or her release, to the appropriate law enforcement agency, and to the clerk of the court. Upon request, a copy of the written notice of conditions shall be provided at no cost to the victim. In any prosecution for violation of a bond condition imposed pursuant to this section, it shall not be a defense that the bond conditions were not entered into the corresponding Uniform Offense Report.

(4) Within twenty-four (24) hours of a violation of any bond conditions imposed pursuant to this section, any law enforcement officer having probable cause to believe that the violation occurred may make a warrantless arrest of the violator.

(5) Nothing in this section shall be construed to interfere with the judges' authority, if any, to deny bail or to otherwise lawfully detain a particular defendant.

**SECTION 11.** Section 99-5-11, Mississippi Code of 1972, is amended as follows:

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99-5-11. (1) All justice court judges and all other conservators of the peace are authorized, whenever a person is brought before them charged with any offense not capital for which bail is allowed by law, to take the recognizance or bond of the person, with sufficient sureties, in such penalty as the justice court judge or conservator of the peace may require, for his appearance before the justice court judge or conservator of the peace for an examination of his case at some future day. And if the person thus recognized or thus giving bond fails to appear at the appointed time, it shall be the duty of the justice court judge or conservator of the peace to return the recognizance or bond, with his certificate of default, to the court having jurisdiction of the case, and a recovery may be had therein by scire facias, as in other cases of forfeiture. The justice court judge or other conservator of the peace shall also issue an alias warrant for the defaulter.

(2) In circumstances involving an offense against any of the following: (a) a current or former spouse of the accused or child of that person; (b) a person living as a spouse or who formerly lived as a spouse with the accused or a child of that person; (c) a parent, grandparent, child, grandchild or someone similarly situated to the accused; (d) a person who has a current or former dating relationship with the accused; or (e) a person with whom the accused has had a biological or legally adopted child, the justice court judge or other conservator of the peace shall check, or cause to be made a check, of the status of the person for whom recognizance or bond is taken before ordering bail in the Mississippi Protective Order Registry authorized under Section 93-21-25, and the existence of a domestic abuse protection order against the accused shall be considered when determining appropriate bail.

**SECTION 12.** Section 99-15-26, Mississippi Code of 1972, is amended as follows:

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99-15-26. (1) (a) In all criminal cases, felony and misdemeanor, other than crimes against the person or a violation of Section 97-11-31, the circuit or county court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(b) In all misdemeanor criminal cases, other than crimes against the person, the justice or municipal court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(c) In all criminal cases charging a misdemeanor of domestic violence as defined in Section 99-3-7(5) or aggravated domestic violence as defined in Section 97-3-7(4), a circuit, county, justice or municipal court shall be empowered, upon the entry of a plea of guilty by the criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(d) No person having previously qualified under the provisions of this section or having ever been convicted of a felony shall be eligible to qualify for release in accordance with this section. A person shall not be eligible to qualify for release in accordance with this section if such person has been charged (i) with an offense pertaining to the sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance, or the possession with intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance, as provided in Section 41-29-139(a)(1), except for a charge under said provision when the controlled substance involved is one (1) ounce or less of marijuana; (ii) with an offense

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pertaining to the possession of one (1) kilogram or more of marijuana as provided in Section 41-29-139(c) (2) (F) and (G); or (iii) with an offense under the Mississippi Implied Consent Law.

(2) (a) Conditions which the circuit, county, justice or municipal court may impose under subsection (1) of this section shall consist of:

(i) Reasonable restitution to the victim of the crime.

(ii) Performance of not more than nine hundred sixty (960) hours of public service work approved by the court.

(iii) Payment of a fine not to exceed the statutory limit.

(iv) Successful completion of drug, alcohol, psychological or psychiatric treatment, successful completion of a program designed to bring about the cessation of domestic abuse, or any combination thereof, if the court deems \* \* \* treatment necessary.

(v) The circuit or county court, in its discretion, may require the defendant to remain in the program subject to good behavior for a period of time not to exceed five (5) years. The justice or municipal court, in its discretion, may require the defendant to remain in the program subject to good behavior for a period of time not to exceed two (2) years.

(b) Conditions which the circuit or county court may impose under subsection (1) of this section also include successful completion of a regimented inmate discipline program.

(3) When the court has imposed upon the defendant the conditions set out in this section, the court shall release the bail bond, if any.

(4) Upon successful completion of the court-imposed conditions permitted by subsection (2) of this section, the court shall direct that the cause be dismissed and the case be closed.

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(5) Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

(6) This section shall take effect and be in force from and after March 31, 1983.

**SECTION 13.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 789

**Description:** Model Business Corporation Act; revise.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* January 1, 2013

**History of Actions:**

- 1 02/20 (H) Referred To Judiciary A
- 2 02/22 (H) Title Suff Do Pass
- 3 03/07 (H) Passed {Vote}
- 4 03/08 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Judiciary, Division A
- 6 03/27 (S) Title Suff Do Pass
- 7 04/09 (S) Amended
- 8 04/09 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/11 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (H) Enrolled Bill Signed
- 12 04/18 (S) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 789

**Code Section:** A 079-0004-0001.22, A 079-0004-0001.25, A 079-0004-0001.29, A 079-0004-0001.40, A 079-0004-0001.41, A 079-0004-0004.01, A 079-0004-0004.02, A 079-0004-0006.20, A 079-0004-0007.04, A 079-0004-0007.05, A 079-0004-0007.22, A 079-0004-0007.42, A 079-0004-0008.01, A 079-0004-0008.05, A 079-0004-0008.06, A 079-0004-0008.07, A 079-0004-0008.10, A 079-0004-0008.24, A 079-0004-0008.31, A 079-0004-0008.50, A 079-0004-0008.53, A 079-0004-0008.58, A 079-0004-0008.60, A 079-0004-0011.01, A 079-0004-0011.02, A 079-0004-0011.03, A 079-0004-0011.04, A 079-0004-0011.06, A 079-0004-0011.07, A 079-0004-0011.08, A 079-0004-0013.20, A 079-0004-0013.21, A 079-0004-0013.22, A 079-0004-0014.21, A 079-0004-0014.22,

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A 079-0004-0015.01, A 079-0004-0015.02, A 079-0004-0015.06, A 079-0004-0015.31, A 079-0004-0015.32, A 079-0004-0016.01, A 079-0004-0016.02, A 079-0004-0016.06, A 079-0004-0016.20, RP 079-0004-0016.21

### ----- Additional Information -----

*House Committee:* Judiciary A

*Senate Committee:* Judiciary, Division A

*Principal Author:* Cockerham

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 789

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Cockerham

To: Judiciary A

HOUSE BILL NO. 789

(As Sent to Governor)

AN ACT TO AMEND SECTION 79-4-1.22, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO CLARIFY FEES CHARGED AND COLLECTED BY THE SECRETARY OF STATE UNDER THE BUSINESS CORPORATION ACT; TO AMEND SECTION 79-4-1.25, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE THE TIME IN WHICH THE SECRETARY OF STATE MUST DELIVER NOTICE OF A REFUSAL TO FILE A DOCUMENT; TO AMEND SECTION 79-4-1.29, MISSISSIPPI CODE OF 1972, TO REVISE THE FINE FOR KNOWINGLY SIGNING A FALSE DOCUMENT; TO AMEND SECTION 79-4-1.40, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-4-1.41, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE FORMS OF NOTICE CONSIDERED SUFFICIENT UNDER THE ACT; TO AMEND SECTION 79-4-4.01, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE REQUIREMENTS PERTAINING TO CORPORATION NAMES; TO AMEND SECTION 79-4-4.02, MISSISSIPPI CODE OF 1972, TO REVISE RESERVATION OF A CORPORATE NAME; TO AMEND SECTION 79-4-6.20, MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL REVISION TO THE PROVISION DEALING WITH SUBSCRIPTION OF SHARES; TO AMEND SECTION 79-4-7.04, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE THE ELECTRONIC TRANSMISSION OF CONSENT TO AN ACTION; TO AMEND SECTION 79-4-7.05, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMOTE PARTICIPATION; TO CREATE SECTION 79-4-7.09, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ELECTRONIC SHAREHOLDER MEETINGS; TO AMEND SECTION 79-4-7.22, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC APPOINTMENT OF A PROXY; TO AMEND SECTION 79-4-7.42, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DATE OF DELIVERY OF A WRITTEN DEMAND; TO AMEND SECTION 79-4-8.01, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXERCISE OF POWER BY THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.05, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXPIRATION OF TERMS OF THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.06, MISSISSIPPI CODE OF 1972, TO CLARIFY THE STAGGERING OF TERMS OF THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.07, MISSISSIPPI CODE OF 1972, TO CLARIFY THE RESIGNATION OF DIRECTORS; TO AMEND SECTION 79-4-8.10, MISSISSIPPI CODE OF 1972, TO CLARIFY THE FILLING OF VACANCIES ON THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.24, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PRESUMPTION OF ASSENT TO CORPORATE ACTIONS; TO CREATE SECTION 79-4-8.26, MISSISSIPPI CODE OF 1972, TO CLARIFY THE SUBMISSION OF A MATTER TO THE SHAREHOLDERS FOR A VOTE WHEN THE ACTION IS NOT RECOMMENDED BY THE BOARD; TO AMEND SECTION 79-4-8.31, MISSISSIPPI CODE OF 1972, TO REVISE THE POTENTIAL LIABILITY OF A DIRECTOR; TO AMEND SECTION 79-4-8.50, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-4-8.53, MISSISSIPPI CODE OF 1972, TO CLARIFY PAYMENT OF EXPENSES OF LITIGATION; TO AMEND SECTION 79-4-8.58, MISSISSIPPI

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CODE OF 1972, TO RESTRICT IMPAIRMENT OF ANY EXISTING RIGHT OF INDEMNIFICATION OR RIGHT TO ADVANCES FOR EXPENSES BY THE SUBSEQUENT AMENDMENT OF CORPORATE ARTICLES OR BYLAWS; TO AMEND SECTION 79-4-8.60, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-4-11.01, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTIONS 79-4-11.02, 79-4-11.03 AND 79-4-11.04, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE NEW DEFINITIONS OF "INTERESTS," "ELIGIBLE INTERESTS" AND "MEMBERSHIP"; TO AMEND SECTION 79-4-11.06, MISSISSIPPI CODE OF 1972, TO CLARIFY FILING OF ARTICLES OF INCORPORATION; TO AMEND SECTION 79-4-11.07, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO CONFORM TO THE NEW DEFINITIONS OF "INTERESTS," "ELIGIBLE INTERESTS" AND "MEMBERSHIP"; TO AMEND SECTION 79-4-11.08, MISSISSIPPI CODE OF 1972, TO CLARIFY ABANDONMENT OF A PLAN OF MERGER OR SHARE EXCHANGE; TO AMEND SECTION 79-4-13.20, MISSISSIPPI CODE OF 1972, TO CLARIFY CERTAIN NOTICES TO SHAREHOLDERS; TO AMEND SECTION 79-4-13.21, MISSISSIPPI CODE OF 1972, TO CLARIFY ASSENT TO AN ACTION TO ASSERT APPRAISAL RIGHTS; TO AMEND SECTION 79-4-13.22, MISSISSIPPI CODE OF 1972, TO REVISE THE FORM OF NOTICE OF AN ACTION REQUIRING APPRAISAL RIGHTS; TO AMEND SECTION 79-4-14.21, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE NOTICE OF DISSOLUTION; TO AMEND SECTION 79-4-14.22, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE REINSTATEMENT; TO AMEND SECTION 79-4-15.01, MISSISSIPPI CODE OF 1972, TO REVISE THE ACTIVITIES REQUIRING CERTIFICATE; TO AMEND SECTION 79-4-15.02, MISSISSIPPI CODE OF 1972, TO CLARIFY THE TRANSACTION OF BUSINESS WITHOUT AUTHORITY; TO AMEND SECTION 79-4-15.06, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENTS THAT APPLY TO A CORPORATE NAME; TO AMEND SECTION 79-4-15.31, MISSISSIPPI CODE OF 1972, TO REVISE REVOCATION OF A FOREIGN CORPORATION'S CERTIFICATE OF AUTHORITY; TO AMEND SECTION 79-4-15.32, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO CLARIFY THE CONTINUATION IN BUSINESS OF A FOREIGN CORPORATION THAT IS REINSTATED AFTER ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-4-16.01, MISSISSIPPI CODE OF 1972, TO CLARIFY REQUIRED RECORD KEEPING; TO AMEND SECTION 79-4-16.02, MISSISSIPPI CODE OF 1972, TO CLARIFY A SHAREHOLDER'S RIGHT OF INSPECTION; TO AMEND SECTION 79-4-16.06, MISSISSIPPI CODE OF 1972, TO CLARIFY NOTICE TO SHAREHOLDERS; TO AMEND SECTION 79-4-16.20, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ANNUAL FINANCIAL STATEMENT REQUIREMENT; TO CREATE SECTION 79-4-17.05, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATION OF THE ACT TO THE FEDERAL ELECTRONIC SIGNATURES ACT; TO REPEAL SECTION 79-4-16.21, MISSISSIPPI CODE OF 1972, DEALING WITH THE REPORTING OF THE INDEMNIFICATION OF OR EXPENSE ADVANCES TO A DIRECTOR AND CERTAIN SHARE ISSUES BY THE CORPORATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 79-4-1.22, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:



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79-4-1.22. (a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation.....	\$ 50.00
(2) Application for use of indistinguishable name.....	25.00
(3) Application for reserved name.....	25.00
(4) Notice of transfer <u>or cancellation</u> of reserved name.....	25.00
(5) Application for registered name.....	50.00
(6) Application for renewal of registered name.....	50.00
(7) <u>[Reserved]</u>	
(8) <u>[Reserved]</u>	
(9) <u>[Reserved]</u>	
(10) Amendment of articles of incorporation...	50.00
(11) Restatement of articles of incorporation.....	50.00
with amendment of articles.....	50.00
(12) Articles of merger or share exchange.....	50.00
(13) Articles of dissolution.....	25.00
(14) Articles of revocation of dissolution....	25.00
(15) Certificate of administrative dissolution.....	No fee
(16) Application for reinstatement following administrative dissolution.....	50.00
(17) Certificate of reinstatement.....	No fee
(18) Certificate of judicial dissolution.....	No fee
(19) Application for certificate of authority.....	500.00
(20) Application for amended certificate of authority.....	50.00



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(21) Application for certificate of withdrawal.....	25.00
(22) Certificate of revocation of authority to transact business.....	No fee
(23) Application for reinstatement following administrative revocation.....	100.00
(24) Certificate of reinstatement.....	No fee
(25) Annual report.....	25.00
(26) Articles of correction.....	50.00
(27) Application for certificate of existence or authorization.....	25.00
(28) Any other document required or permitted to be filed by Section 79-4-1.01 et seq.....	25.00

(b) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on him under Section 79-4-1.01 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) One Dollar (\$1.00) a page for copying; and
- (2) Ten Dollars (\$10.00) for the certificate.

(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to:

(1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

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(2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars (\$25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

**SECTION 2.** Section 79-4-1.25, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-1.25. (a) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of Section 79-4-1.20, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, \* \* \* the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document, in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

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**SECTION 3.** Section 79-4-1.29, Mississippi Code of 1972, is amended as follows:

79-4-1.29. (a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed One Thousand Dollars (\$1,000.00).

**SECTION 4.** Section 79-4-1.40, Mississippi Code of 1972, is amended as follows:

79-4-1.40. In Section 79-4-1.01 et seq.:

(1) "Articles of incorporation" means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Secretary of State under any provision of this chapter except Section 79-4-16.22. If an amendment of the articles or any other document filed under this chapter restates the articles in their entirety, thenceforth the "articles" shall not include any prior documents.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, \* \* \* capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of Section 79-4-1.01 et seq.

(5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including

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delivery by hand, mail, commercial delivery and, if authorized in accordance with Section 79-7-1.41, by electronic transmission.

(6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Documents" means (i) any tangible medium on which information is inscribed, and includes any writing or written instruments, or (ii) an electronic record.

(8) "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this state.

(9) "Effective date of notice" is defined in Section 79-4-1.41.

\* \* \*

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) "Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with Section 79-4-1.41(j).

(12) "Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an



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automated process used in conventional commercial practice, unless otherwise authorized in accordance with Section 79-4-1.41(j).

(13) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(14) "Eligible interest" means interests or membership.

(15) "Employee" includes an officer but not a director.  
A director may accept duties that make him also an employee.

(16) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(17) "Entity" includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; business trust; domestic and foreign unincorporated entity; two (2) or more persons having a joint or common economic interest, and state, United States, and foreign government.

(18) "Facts objectively ascertainable" outside of a filed document or plan is defined in Section 79-4-1.20(k).

(19) "Filing entity" means another entity that is of a type that is created by filing a public organic document.

(20) "Foreign corporation" means a corporation \* \* \* incorporated under a law other than the law of this state, which would be a business corporation if incorporated under the laws of this state.

(21) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state.

(22) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(23) "Governmental subdivision" includes authority, county, district and municipality.

(24) "Includes" denotes a partial definition.



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(25) "Individual" means a natural person, and includes the estate of an incompetent or deceased natural person.

(26) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(27) "Means" denotes an exhaustive definition.

(28) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(29) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of Section 79-11-101 et seq.

(30) "Notice" is defined in Section 79-4-1.41.

(31) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(32) "Person" includes an individual and an entity.

(33) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(34) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(35) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national \* \* \* securities association.

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(36) "Qualified director" is defined in Section 79-4-1.43.

(37) "Record date" means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of Section 79-4-1.01 et seq. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(38) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-4-8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(39) "Shares" means the unit into which the proprietary interests in a corporation are divided.

(40) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(41) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(i) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(ii) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(42) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

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(43) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(44) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint-stock association and unincorporated nonprofit association.

(45) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(46) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or Section 79-4-1.01 et seq. are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or Section 79-4-1.01 et seq. to vote generally on the matter are for that purpose a single voting group.

(47) "Voting power" means the current power to vote in the election of directors.

(48) "Writing" or "written" means any information in the form of a document.

**SECTION 5.** Section 79-4-1.41, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-1.41. (a) Notice under Section 79-4-1.01 et seq. must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter must be in English.

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(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

\* \* \*

(c) Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent \* \* \* or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(d) Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j) of this section.

(e) Any consent under subsection (d) of this section may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (1) the corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with such consent, and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications; the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information-processing system that the recipient has designated or uses for the purpose of receiving



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electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(g) Receipt of an electronic acknowledgement from an information-processing system described in subsection (f)(1) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(h) An electronic transmission is received under this section even if no individual is aware of its receipt.

(i) \* \* \* Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

\* \* \*

(1) If in physical form, the earliest of when it is actually received, or when it is left at:

(i) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under Section 79-4-16.01(c);

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal place of business;

(2) \* \* \* If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest when it is actually received or;



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(i) \* \* \* If sent by registered or certified mail, return receipt requested, the date shown on the return receipt \* \* \* signed by or on behalf of the addressee; or

(ii) Five (5) days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (f) of this section; and

(5) If oral, when communicated.

\* \* \*

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (1) the electronic transmission is otherwise retrievable in perceivable form, and (2) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If Section 79-4-1.01 et seq. prescribes \* \* \* requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe \* \* \* requirements for notices or other communications, not inconsistent with this section or other provisions of Section 79-4-1.01 et seq., those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

**SECTION 6.** Section 79-4-4.01, Mississippi Code of 1972, is amended as follows:

79-4-4.01. (a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company" or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd." or words or abbreviations of like import in another language; and

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(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 79-4-3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

★ ★ ★

(2) The fictitious name adopted by a foreign corporation or foreign limited liability company authorized to transact business in this state because its real name is unavailable; ★ ★ ★

(3) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state;

(4) The name of a limited partnership, limited liability partnership or limited liability company that is organized or registered under the laws of this state and which has not been dissolved; and

(5) A name that is reserved or registered in the Office of the Secretary of State for any of the entities named in subsection (b) of this section which reservation or registration has not expired.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

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(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) Section 79-4-1.01 et seq. does not control the use of fictitious names.

**SECTION 7.** Section 79-4-4.02, Mississippi Code of 1972, is amended as follows:

79-4-4.02. (a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-eighty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(c) The reservation of a specified name may be cancelled by delivering to the Office of the Secretary of State a notice of

cancellation, specifying the name of the reservation to be cancelled and the name and address of the owner or transferee.

(d) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(e) A fee as set forth in Section 79-4-1.22(4) of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**SECTION 8.** Section 79-4-6.20, Mississippi Code of 1972, is amended as follows:

79-4-6.20. (a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides



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otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends a written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 79-4-6.21.

**SECTION 9.** Section 79-4-7.04, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-7.04. (a) Action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A unanimous consent signed under this subsection is the act of the shareholders when consents signed by all shareholders have been delivered to the corporation.

(b) The articles of incorporation may provide that any action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholder's meeting may be taken without a meeting and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.



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(c) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporation action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by less than unanimous written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

(e) If Section 79-4-1.01 et seq. requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after (i) written consents

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sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

\* \* \*

**SECTION 10.** Section 79-4-7.05, Mississippi Code of 1972, is amended as follows:

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79-4-7.05. (a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to Section 79-4-7.09 for any class or series of shareholders, the notice of such class or series of shareholders shall describe the means of remote communication to be used. Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 79-4-7.07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

**SECTION 11.** The following shall be codified as Section 79-4-7.09, Mississippi Code of 1972:

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### 79-4-7.09. Remote participation in annual and special

**meetings.** (a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

(1) To verify that each person participating remotely is a shareholder; and

(2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceeding.

**SECTION 12.** Section 79-4-7.22, Mississippi Code of 1972, is amended as follows:

79-4-7.22. (a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission, and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent



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of the corporation authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under Section 79-4-7.31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to Section 79-4-7.24 and to any express limitation on the proxy's authority stated in the appointment form



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or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

**SECTION 13.** Section 79-4-7.42, Mississippi Code of 1972, is amended as follows:

79-4-7.42. No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety (90) days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

**SECTION 14.** Section 79-4-8.01, Mississippi Code of 1972, is amended as follows:

79-4-8.01. (a) Except as provided in Section 79-4-7.32, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 79-4-7.32.

**SECTION 15.** Section 79-4-8.05, Mississippi Code of 1972, is amended as follows:

79-4-8.05. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next, or if their terms are staggered in accordance with Section 79-4-8.06,

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at the applicable second or third, annual shareholders' meeting following their election \* \* \*.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

**SECTION 16.** Section 79-4-8.06, Mississippi Code of 1972, is amended as follows:

79-4-8.06. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

**SECTION 17.** Section 79-4-8.07, Mississippi Code of 1972, is amended as follows:

79-4-8.07. (a) A director may resign at any time by delivering written notice to the board of directors, or its chair or to the secretary of the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

**SECTION 18.** Section 79-4-8.10, Mississippi Code of 1972, is amended as follows:

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79-4-8.10. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) The shareholders may fill the vacancy;
- (2) The board of directors may fill the vacancy; or
- (3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to fill the vacancy if it is filled by the shareholders and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the director.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under Section 79-4-8.07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**SECTION 19.** Section 79-4-8.24, Mississippi Code of 1972, is amended as follows:

79-4-8.24. (a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

- (1) A majority of the fixed number of directors if the corporation has a fixed board size; or
- (2) A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than

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one-third (1/3) of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) the director objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**SECTION 20.** The following shall be codified as Section 79-4-8.26, Mississippi Code of 1972:

79-4-8.26. A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

**SECTION 21.** Section 79-4-8.31, Mississippi Code of 1972, is amended as follows:

79-4-8.31. (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) No defense by the director based on (i) any provision in the articles of incorporation authorized by Section 79-4-2.02(b)(4) or the protection afforded by Section 79-4-8.61



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for action taken in compliance with Section 79-4-8.62 or 79-4-8.63, or (ii) the protection afforded by Section 79-4-8.70, precludes liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith; or

(ii) A decision:

(A) Which the director did not reasonably believe to be in the best interests of the corporation; or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's



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duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct; or

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under Section 79-4-8.61(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of this act, such as the provisions governing the consequences of an unlawful distribution under Section 79-4-8.33 or a transactional interest under Section 79-4-8.61, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

**SECTION 22.** Section 79-4-8.50, Mississippi Code of 1972, is amended as follows:

79-4-8.50. In this subarticle:

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(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan \* \* \*. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an officer, as contemplated in Section 79-4-8.56, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal,

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administrative, arbitratative or investigative and whether formal or informal.

**SECTION 23.** Section 79-4-8.53, Mississippi Code of 1972, is amended as follows:

79-4-8.53. (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in Section 79-4-8.51 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by Section 79-4-2.02(b)(4); and

(2) A signed written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under Section 79-4-8.52 and it is ultimately determined under Section 79-4-8.54 or Section 79-4-8.55 that the director has not met the relevant standard of conduct described in Section 79-4-8.51.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two (2) or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote; or

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(ii) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board in accordance with Section 79-4-8.24(c), in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

**SECTION 24.** Section 79-4-8.58, Mississippi Code of 1972, is amended as follows:

79-4-8.58. (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with Section 79-4-8.51 or advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by this subarticle or under subsection (a) that is in effect at the time of an act or omission shall not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders adopted after the occurrence of the act or omission, unless, in the case of a right created under subsection (a), the provision creating the right that is in effect at the time of the act or omission explicitly authorizes elimination or impairment after the act or omission has occurred.

(c) Any provision pursuant to subsection (a) shall not obligate the corporation to indemnify or advance expenses to a



director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 79-4-11.06(a)(3).

(d) Subject to subsection (b), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(e) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(f) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

**SECTION 25.** Section 79-4-8.60, Mississippi Code of 1972, is amended as follows:

79-4-8.60. In Sections 79-4-8.60 through 79-4-8.63 and Section 79-4-8.70:

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

(i) To which, at the relevant time, the director is a party; or

(ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or



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(iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) "Control" (including the term "controlled by") means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) "Relevant time" means (i) the time at which directors' actions respecting the transaction are taken in compliance with Section 79-4-8.62, or (ii) if the transaction is not brought before the board of directors of the corporation (or its committee) for action under Section 79-4-8.62, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(i) The director's spouse;

(ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsiblings, half-siblings, aunt, uncle, niece or nephew (or spouse of any thereof) of the director or of the director's spouse;

(iii) An individual living in the same home as the director;

(iv) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or any person specified in this paragraph (5);

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(v) A domestic or foreign (A) business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director is a director, (B) unincorporated entity of which the director is a general partner or a member of the governing body, or (C) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the director.

(6) "Fair to the corporation" means, for purposes of Section 79-4-8.61(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation, and (ii) comparable to what might have been obtainable in an arms' length transaction, given the consideration paid or received by the corporation.

(7) "Required disclosure" means disclosure of (i) the existence and nature of the director's conflicting interest, and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

**SECTION 26.** Section 79-4-11.01, Mississippi Code of 1972, is amended as follows:

79-4-11.01. As used in this chapter:

\* \* \*

(a) "Merger" means a business combination pursuant to Section 79-4-11.02.

(b) "Organizational documents" means the basic document or documents that create, or determine the internal governance of, an eligible entity.

\* \* \*

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(c) "Party to a merger" or "party to a share exchange" means any domestic or foreign corporation or eligible entity that will \* \* \*:

- (1) Merge under a plan of merger;
- (2) Acquire shares or eligible interests of another corporation or eligible entity in a share exchange; or
- (3) Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(d) "Share exchange" means a business combination pursuant to Section 79-4-11.03.

(e) "Survivor" in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

**SECTION 27.** Section 79-4-11.02, Mississippi Code of 1972, is amended as follows:

79-4-11.02. (a) One or more domestic corporations may merge with a domestic or foreign corporation or eligible entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign eligible entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed; and

(2) In effecting the merger, the corporation or eligible entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) The name of each corporation or eligible entity that will merge and the name of the corporation or eligible entity that will be the survivor of the merger;

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(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging corporation and eligible interest of each merging eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any corporation, or the organizational documents of any eligible entity to be created by the merger, or if a new corporation or eligible entity is not to be created by the merger, any amendments to the survivor's articles of incorporation, or organizational documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

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(2) Change the articles of incorporation of any corporation or the organizational documents of any eligible entity, that will survive or be created as a result of the merger, except for changes permitted by Section 79-4-10.05 or by comparable provisions of the laws under which the foreign corporation or eligible entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Liability from a merger shall be limited as provided in Sections 79-33-1 through 79-33-9.

**SECTION 28.** Section 79-4-11.03, Mississippi Code of 1972, is amended as follows:

79-4-11.03. (a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign eligible entity, may be a party to the share exchange only if:



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(1) The share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed; and

(2) In effecting the share exchange, the corporation or eligible entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of share exchange must include:

(1) The name of each corporation or eligible entity whose shares or interests will be acquired and the name of the corporation or eligible entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an eligible entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

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(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan; or

(2) Change any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Section 79-4-11.03 does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

**SECTION 29.** Section 79-4-11.04, Mississippi Code of 1972, is amended as follows:

79-4-11.04. In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in Section 79-4-11.05, after adopting the plan of merger, the board of directors must submit the plan to the shareholders for their approval. After adopting the plan of share exchange, the board of directors of the corporation whose shares will be acquired in the share exchange must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan of merger or share exchange, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

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(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or eligible entity.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required:

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(1) On a plan of merger, by each class or series of shares that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 79-4-10.04;

(2) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger is not required if:

(1) The corporation will survive the merger; and

(2) Except for amendments permitted by Section 79-4-10.05, its articles of incorporation will not be changed; and

(3) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(4) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares



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of the surviving corporation outstanding immediately before the merger; and

(5) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

**SECTION 30.** Section 79-4-11.06, Mississippi Code of 1972, is amended as follows:

79-4-11.06. (a) After a plan of merger or share exchange has been adopted and approved as required by the Mississippi Business Corporation Act, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;



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(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Business Corporation Act and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation and each eligible entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or eligible entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on the effective date.

**SECTION 31.** Section 79-4-11.07, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-11.07. (a) When a merger becomes effective:

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- (1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;
- (2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;
- (3) All property owned by, and every contract right possessed by, each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;
- (4) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor subject to the limitations as provided in Sections 79-33-1 through 79-33-9;
- (5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
- (6) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;
- (7) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and
- (8) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Title 79, Chapter 4, Article 13.
  - (b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or

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other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Title 79, Chapter 4, Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) Agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights, may be made in the manner provided in Section 79-35-13; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Title 79, Chapter 4, Article 13.

**SECTION 32.** Section 79-4-11.08, Mississippi Code of 1972, is amended as follows:

79-4-11.08. (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the merger or share exchange has become effective, it may be abandoned by any party thereto without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of

directors, \* \* \* subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

**SECTION 33.** Section 79-4-13.20, Mississippi Code of 1972, is amended as follows:

79-4-13.20. (a) Where any corporate action specified in Section 79-4-13.02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to Section 79-4-11.05, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in Section 79-4-13.22.

(c) Where any corporate action specified in Section 79-4-13.02(a) is to be approved by written consent of the shareholders pursuant to Section 79-4-7.04:



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(1) Written notice that appraisal rights are, are not or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and

(2) Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by Section 79-4-7.04(e) and (f), may include the materials described in Section 79-4-13.22 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

**SECTION 34.** Section 79-4-13.21, Mississippi Code of 1972, is amended as follows:

79-4-13.21. (a) If a corporate action specified in Section 79-4-13.02(a) is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in Section 79-4-13.02(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) is not entitled to payment under this article.



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**SECTION 35.** Section 79-4-13.22, Mississippi Code of 1972, is amended as follows:

79-4-13.22. (a) If proposed corporate action requiring appraisal rights under Section 79-4-13.02(a) becomes effective, the corporation must send a written appraisal notice and the form required by subsection (b)(1) to all shareholders who satisfied the requirements of Section 79-4-13.21(a) or Section 79-4-13.21(b). In the case of a merger under Section 79-4-11.05, the parent must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be delivered no earlier than the date the corporate action specified in Section 79-4-13.02(a) became effective and no later than ten (10) days after such date, and must:

(1) Supply a form that (i) specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action, if any, and (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date and that, as to those shares, the shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(ii);

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) appraisal notice is sent, and state that the shareholder shall have waived

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the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subsection (2)(ii) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under Section 79-4-13.23 must be received, which date must be within twenty (20) days after the date specified in subsection (2)(ii); and

(3) Be accompanied by a copy of this article.

**SECTION 36.** Section 79-4-14.21, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-14.21. (a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination \* \* \*, except that such determination may be served by first-class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected \* \* \*, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation \* \* \*, except that such certificate may be served by first-class mail.

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(c) [Reserved]

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) The administrative dissolution of a corporation shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of the corporation or prevent the corporation from defending any action, suit or proceeding in any court of this state.

(f) A corporation that has been administratively dissolved may not maintain any action, suit or proceeding in any court of this state until the corporation is reinstated.

**SECTION 37.** Section 79-4-14.22, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-14.22. (a) A corporation administratively dissolved under Section 79-4-14.21 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The applicant must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that all taxes owed by the corporation have been paid \* \* \*.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective

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date of reinstatement, file the original of the certificate and serve a copy on the corporation \* \* \*.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(2) Any liability incurred by the corporation, director, officer or a shareholder after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(3) The corporation may resume carrying on its business as if the administrative dissolution had never occurred.

**SECTION 38.** Section 79-4-15.01, Mississippi Code of 1972, is amended as follows:

79-4-15.01. (a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) Maintaining, defending or settling any proceeding;

(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;



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- (7) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;
- (11) Transacting business in interstate commerce;
- (12) Being a shareholder in a corporation or a foreign corporation that transacts business in this state;
- (13) Being a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state;
- (14) Being a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state.

(c) The list of activities in subsection (b) is not exhaustive.

(d) A foreign corporation which is \* \* \* general partner of any general or limited partnership \* \* \*, which partnership is transacting business in this state, is hereby declared to be transacting business in this state.

**SECTION 39.** Section 79-4-15.02, Mississippi Code of 1972, is amended as follows:

79-4-15.02. (a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to, a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court



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in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign corporation or prevent the foreign corporation from defending any action, suit or proceeding in any court of this state.

**SECTION 40.** Section 79-4-15.06, Mississippi Code of 1972, is amended as follows:

79-4-15.06. (a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 79-4-4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word "corporation," "incorporated," "company" or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," to its corporate name for use in this state; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its

board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

\* \* \*

(2) The fictitious name of another foreign corporation or foreign limited liability company authorized to transact business in this state; \* \* \*

(3) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state;

(4) The name of a limited partnership, limited liability partnership or limited liability company that is organized or registered under the laws of this state and which has not been dissolved; and

(5) A name that is reserved or registered in the Office of the Secretary of State for any of the entities named in subsection (b) which reservation or registration has not expired.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

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(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of Section 79-4-4.01, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of Section 79-4-4.01 and obtains an amended certificate of authority under Section 79-4-15.04.

**SECTION 41.** Section 79-4-15.31, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-15.31. (a) If the Secretary of State determines that one or more grounds exist under Section 79-4-15.30 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under Section 79-4-15.10, except that such determination may be served by first-class mail.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after

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service of the notice is perfected under Section 79-4-15.10, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-4-15.10, except that such certificate may be served by first-class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under the Mississippi Rules of Civil Procedure is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(f) The administrative revocation of a foreign corporation's certificate of authority shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign corporation or prevent the foreign corporation from



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defending any action, suit or proceeding with any court of this state.

(g) A foreign corporation whose registration has been administratively revoked may not maintain any action, suit or proceeding in any court of this state until such foreign corporation's certificate of authority has been reinstated.

**SECTION 42.** Section 79-4-15.32, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-15.32. (a) A foreign corporation whose certificate of authority is administratively revoked under Section 79-4-15.31 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

- (1) Recite the name of the corporation and the effective date of the administrative revocation;
- (2) State that the ground or grounds for revocation either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and
- (4) Contain a certificate from the Mississippi Department of Revenue reciting that the corporation has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Section 79-35-13.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative



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revocation. Any liability incurred by the foreign corporation or a director, officer or shareholder after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred, and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

**SECTION 43.** Section 79-4-16.01, Mississippi Code of 1972, is amended as follows:

79-4-16.01. (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation, all amendments to them currently in effect and any notices to shareholders referred to in Section 79-4-1.20(k)(5) regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

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(3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(5) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under Section 79-4-16.20;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the Secretary of State under Section 79-4-16.22.

**SECTION 44.** Section 79-4-16.02, Mississippi Code of 1972, is amended as follows:

79-4-16.02. (a) Subject to Section 79-4-16.03(c), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 79-4-16.01(e) if he gives the corporation a signed written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation a signed written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of

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directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records identified in subsection (b) only if:

(1) His demand is made in good faith and for a proper purpose;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under Section 79-4-7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(2) The power of a court, independently of Section 79-4-1.01 et seq., to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

**SECTION 45.** Section 79-4-16.06, Mississippi Code of 1972, is amended as follows:

79-4-16.06. (a) Whenever notice would otherwise be required to be given under any provision of this act to a shareholder, such notice need not be given if:

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(1) Notices to the shareholders of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

(2) All, but not less than two (2), payments or dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then current address, the requirement that notice be given to such shareholder shall be reinstated.

**SECTION 46.** Section 79-4-16.20, Mississippi Code of 1972, is amended as follows:

79-4-16.20. (a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the



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statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder to whom the statements were not delivered, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

**SECTION 47.** The following shall be codified as Section 79-4-17.05, Mississippi Code of 1972:

79-4-17.05. In the event that any provisions of this chapter are deemed to modify, limit or supersede the Federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by Section 102(a)(2) of that federal act.

**SECTION 48.** Section 79-4-16.21, Mississippi Code of 1972, dealing with the reporting of the indemnification of or expense advances to a director in connection with a proceeding as well as certain issues of shares by the corporation, is repealed.

**SECTION 49.** This act shall take effect and be in force from and after January 1, 2013.



Mississippi Legislature  
2012 Regular Session

House Bill 825

**Description:** Public utilities; revise jurisdiction of Public Service Commission to exclude certain technological services.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No


*Vote type required:* Majority

*Effective date:* July 1, 2012







**History of Actions:**

- 1 02/20 (H) Referred To Public Utilities
- 2 03/01 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Read the Third Time
- 4 03/14 (H) Committee Substitute Adopted
- 5 03/14 (H) Amended
- 6 03/14 (H) Point of Order Raised
- 7 03/14 (H) Set Aside-Pend Ruling of Chair
- 8 03/14 (H) Point of Order Withdrawn
- 9 03/14 (H) Passed As Amended {Vote}
- 10 03/14 (H) Motion to Reconsider Entered (Beckett, McGee, Holland)
- 11 03/15 (H) Motion to Reconsider Tabled
- 12 03/19 (H) Transmitted To Senate
- 13 03/26 (S) Referred To Energy;Finance
- 14 03/29 (S) DR - TSDPAA: EN To FI
- 15 03/29 (S) Title Suff Do Pass As Amended
- 16 04/04 (S) Amended
- 17 04/04 (S) Passed As Amended {Vote}
- 18 04/05 (S) Returned For Concurrence
- 19 04/09 (H) Decline Concur/Inv Conf Lost
- 20 04/09 (H) Concurred in Amend From Senate {Vote}
- 21 04/12 (S) Enrolled Bill Signed
- 22 04/12 (H) Enrolled Bill Signed
- 23 04/19 Approved by Governor

**Amendments:**

  [H] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote

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  [H] Amendment No 2 (Cmte Sub) **Lost** Voice Vote  
  [H] Amendment No 3 (Cmte Sub) **Lost** Voice Vote  
  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 825

**Code Section:** A 077-0003-0003, A 077-0003-0035

----- Additional Information -----

**House Committee:** Public Utilities

**Senate Committee:** Energy, Finance

**Principal Author:** Beckett

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 825

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

by: Representative Beckett

To: Public Utilities

HOUSE BILL NO. 825  
(As Sent to Governor)

AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "VIDEO SERVICES," "VOICE OVER INTERNET PROTOCOL SERVICES," "COMMERCIAL MOBILE SERVICES" AND "INTERNET PROTOCOL ENABLED SERVICES"; TO PROVIDE THAT SUCH SERVICES SHALL NOT BE INCLUDED IN THE REGULATION OF PUBLIC UTILITIES; TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION SHALL HAVE JURISDICTION OVER INTRASTATE SWITCHED ACCESS SERVICE PROVIDED BY PUBLIC UTILITIES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 77-3-3, Mississippi Code of 1972, is amended as follows:

77-3-3. As used in this chapter:

(a) The term "corporation" includes a private or public corporation, a municipality, an association, a joint-stock association or a business trust.

(b) The term "person" includes a natural person, a partnership of two (2) or more persons having a joint or common interest, a cooperative, nonprofit, limited dividend or mutual association, a corporation, or any other legal entity.

(c) The term "municipality" includes any incorporated city, town or village.

(d) The term "public utility" includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for:

(i) The generation, manufacture, transmission or distribution of electricity to or for the public for compensation;

(ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and

artificial gas to the public for compensation by means of transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;

(iii) The transmission, conveyance or reception of any message over wire, \* \* \* of writing, signs, signals, pictures and sounds of all kinds by or for the public, where such service is offered to the public for compensation, and the furnishing, or the furnishing and maintenance, of equipment or facilities to the public, for compensation, for use as a private communications system or part thereof; however, no person or corporation not otherwise a public utility within the meaning of this chapter shall be deemed such solely because of engaging in this state in the furnishing, for private use as last aforementioned, and moreover, nothing in this chapter shall be construed to apply to television stations, radio stations, community television antenna services, video services, voice over Internet protocol services ("VoIP"), any wireless services including commercial mobile services, Internet protocol ("IP") - enabled services or broadband services; and

(iv) The transmission, distribution, sale or resale of water to the public for compensation, or the collection, transmission, treatment or disposal of sewage, or otherwise operating a sewage disposal service, to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or

tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

A public utility's business other than of the character defined in subparagraphs (i) through (iv) of this paragraph is not subject to the provisions of this chapter.

(e) The term "rate" means and includes every compensation, charge, fare, toll, rental and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity described in this section, offered by it to the public, and any rules, regulations, practices or contracts relating to any such compensation, charge, fare, toll, rental or classification; however, the term "rate" shall not include charges for electrical current furnished, delivered or sold by one public utility to another for resale.

(f) The word "commission" shall refer to the Public Service Commission of the State of Mississippi, as now existing, unless otherwise indicated.

(g) The term "affiliated interest" or "affiliate" includes:

(i) Any person or corporation owning or holding, directly or indirectly, twenty-five percent (25%) or more of the voting securities of a public utility;

(ii) Any person or corporation in any chain of successive ownership of twenty-five percent (25%) or more of the voting securities of a public utility;

(iii) Any corporation of which fifteen percent (15%) or more of the voting securities is owned or controlled, directly or indirectly, by a public utility;

(iv) Any corporation twenty-five percent (25%) or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or



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controls, directly or indirectly, twenty-five percent (25%) or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of twenty-five percent (25%) of such securities;

(v) Any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of fifteen percent (15%) or more of voting securities of a public utility; or

(vi) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under a common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the discretion of the management and policies of another, whether such power is established through ownership of voting securities or by any other direct or indirect means.

However, the term "affiliated interest" or "affiliate" shall not include a joint agency organized pursuant to Section 77-5-701 et seq. nor a member municipality thereof.

(h) The term "facilities" includes all the plant and equipment of a public utility, used or useful in furnishing public utility service, including all real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished or supplied for, by or in connection with its public utility business.

(i) The term "cost of service" includes operating expenses, taxes, depreciation, net revenue and operating revenue requirement at a claimed rate of return from public utility operations.

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(j) The term "lead-lag study" includes an analysis to determine the amount of capital which investors in a public utility, the rates of which are subject to regulation under the provisions of this chapter, must provide to meet the day-to-day operating costs of the public utility prior to the time such costs are recovered from customers, and the measurement of (i) the lag in collecting from the customer the cost of providing service, and (ii) the lag in paying the cost of providing service by the public utility.

(k) The term "broadband services" means any service that consists of or includes a high-speed access capability to transmit at a rate that is not less than two hundred (200) kilobits per second either in the upstream or downstream direction and either:

(i) Is used to provide access to the Internet, or

(ii) Provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service.

(l) The term "video services" means video programming services without regard to delivery technology, including Internet protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public Internet. The term "video programming" means any programming as defined in 47 USCS Section 522(20).

(m) The term "Voice over Internet Protocol services" or "VoIP services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that

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originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(n) The term "commercial mobile services" means any services as defined in 47 USCS Section 332(d).

(o) The term "Internet protocol-enabled services" or "IP-enabled services" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

Nothing contained in this paragraph shall apply to retail services that are tariffed by the commission.

**SECTION 2.** Section 77-3-35, Mississippi Code of 1972, is amended as follows:

77-3-35. (1) Subject to the provisions of subsections (2) and (4) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, as to the rates which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing such rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept

any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, the following:

(a) That utilities may contract with a manufacturer that is not a utility for furnishing the services or commodities described in Section 77-3-3(d)(i), (ii) and (iii) for use in manufacturing;

(b) That utilities described in Section 77-3-3(d)(i) also may contract with a customer that has a minimum yearly electric consumption of two thousand five hundred (2,500) megawatt hours per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(i); and

(c) That utilities described in Section 77-3-3(d)(ii) also may contract with a customer that has a minimum yearly consumption of eight million five hundred thousand (8,500,000) cubic feet of gas per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(ii).

These contracts may be entered into without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision



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of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one (1) competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographical area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services.

The commission shall adopt all rules and regulations necessary for implementing this subsection (2)(a).

The commission may apply standards adopted by the Federal Communications Commission that are generally applicable to companies that are designated and operate as eligible telecommunications carriers, pursuant to 47 USCS Section 214(e). The commission may exercise its authority to ensure that these carriers, including commercial mobile radio service providers that receive federal eligible telecommunications status, comply with those standards, only to the extent permitted by and consistent with applicable federal laws and regulations.

The commission retains the authority to issue orders to implement its rules, regulations and the provisions of this chapter, including the authority to grant and modify, impose conditions upon, or revoke a certificate.

(b) The commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the



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public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination

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and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3) (a) The commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d) (i), (ii) or (iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection, the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

(4) (a) Notwithstanding any other provisions of this article or any other statute to the contrary, and consistent with the provisions herein, for those public utilities of the type defined in Section 77-3-3(d) (iii) that are subject to the competitive requirements set forth in 47 USCS Section 251 or those public utilities that have waived a suspension granted by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f) (2), the Legislature has determined that, in the provision of all services, other than switched access service \* \* \*, competition or other market forces adequately protect the public interest. Therefore, subject to Section 77-3-35(4) (d), the commission no longer has jurisdiction over the services, other than the provision of intrastate switched access service, provided by such public utilities. \* \* \*

(b) For those public utilities of the type defined in Section 77-3-3(d) (iii) that have been granted a suspension by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f) (2), the commission, at the

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request of such public utility, shall enter an order, after notice and opportunity for hearing, determining that such public utility's provision of service will be subject to the same level of regulation as provided in paragraph (a) of this subsection, but only after the commission determines that such public utility has satisfied one (1) of the following conditions:

(i) Has executed interconnection agreements which have been approved by the commission to the extent required under law with two (2) or more local exchange carriers unaffiliated with such public utility;

(ii) Offers for resale at wholesale rates, pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public utility's retail telecommunications services provided to subscribers who are not telecommunications carriers;

(iii) At least two (2) competitive telecommunications providers unaffiliated with such requesting public utility are offering service to such public utility's subscribers; or

(iv) Has experienced a material reduction in access lines or minutes of use in two (2) consecutive years.

A waiver of suspension under paragraph (a) of this subsection shall be effective upon written notification to the commission. The initial rate utilized by such public utility shall be the rate for such service in effect at the time of such waiver under this section. The commission, upon request of the public utility, may return such public utility to a form of regulation permitted under this section.

(c) \* \* \* Subject to Section 77-3-35(4)(d), a public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be subject to any rule, regulation or order promulgated by the commission with regard to retail services. The provisions of Section 77-3-23 shall not apply to such public utility

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regulated under the provisions of paragraph (a) of this subsection.

\* \* \*

(d) Nothing in this chapter shall be construed to affect the duties of an incumbent local exchange carrier arising under 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections, or the commission's authority to approve, arbitrate and enforce interconnection agreements and to resolve disputes pursuant to 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections or any other applicable federal law or regulation. The commission shall exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and with respect to enforcement or modification of any wholesale self-effectuating enforcement mechanism plan in place as of July 1, 2011, and to issue orders to resolve such complaints, provided that such actions are consistent with federal telecommunications law. The commission shall interpret and apply federal, not state, substantive law. The commission shall adjudicate and enforce such claims in accordance with state procedural law and rules. No claim shall be brought to the commission as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the commission within one hundred eighty (180) days of the filing of the complaint.

(e) The commission shall retain exclusive original jurisdiction over customer complaints for those services that continue to be regulated. For services no longer regulated, the commission shall have exclusive original jurisdiction to interpret and enforce the terms and conditions of customer service agreements for telecommunications services, but it shall not



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alter, set aside or refuse to enforce the rates, terms and conditions thereof, either directly or indirectly. No other party shall be allowed to participate in any such complaint proceeding, except for the customer, legal counsel or other representative of the customer, or the public utility involved.

(f) A public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be required to file financial, service quality or other information with the commission. \* \* \* The calculation of the public utility regulatory tax established in Section 77-3-87 shall be based upon ninety thousandths of one percent (90/1000 of 1%) per year of the gross revenues from the intrastate operations of such public utility which is subject to regulation under the provision of paragraph (a) of this subsection \* \* \*. In addition, such public utility shall only be required to adhere to billing for retail telecommunications services in compliance with the federal truth in billing regulations prescribed by the Federal Communications Commission.

(g) (i) In order to transition to the changes effectuated by paragraph (a) of this subsection, the rates, terms and conditions for products and services no longer subject to regulation by the commission which were in effect with a specific term immediately prior to July 1, 2006, shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to July 1, 2006. If no term applied to such products or services at the time such customer subscribed to such products or services, then the rates, terms and conditions governing such products or services shall remain in effect until a written customer service agreement becomes effective as described in subparagraph (ii) of this paragraph (g).

(ii) Except as provided in subparagraph (i) of this paragraph (g), the service provider shall offer existing and



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new customers a written customer service agreement, which in the case of new customers shall be delivered no later than thirty (30) days after the initiation of service. The customer service agreement shall include a provision advising the customer that he has thirty (30) days from receipt in which to elect:

1. To terminate service with the service provider by contacting such service provider within the thirty-day time period, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement shall relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and shall be in effect until termination through pay off; or

2. To use the services of the service provider or to otherwise continue the account with the service provider after the thirty-day time period has elapsed, either of which shall constitute the customer's assent to all the rates, terms and conditions of the written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(iii) If any service provider desires to modify in any respect any rates, terms or conditions of a customer service agreement, it shall provide at least thirty (30) days' prior written notice of the modification and the proposed effective date to the customer. The customer service agreement shall include a provision advising the customer that he has the option:

1. To terminate service with the service provider by contacting such service provider prior to the effective date, in which case the customer shall have the right to

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pay off the account in the same manner and under the same rates, terms and conditions as then in effect; or

2. To use the services of the service provider or to otherwise continue the account with the service provider on or after the effective date, either of which shall constitute the customer's assent to the modified written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(h) Nothing herein shall change the obligation of those public utilities described in Section 77-3-3(d)(iii) to obtain a certificate of public convenience and necessity pursuant to this chapter.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 833

**Description:** Division of Community Services within Department of Youth Services; extend repealer on.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority


*Effective date:* June 30, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Youth and Family Affairs
- 2 02/29 (H) Title Suff Do Pass
- 3 03/08 (H) Passed [Vote]
- 4 03/09 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Public Health and Welfare; Appropriations
- 6 03/27 (S) DR - TSDPAA: PH To AP
- 7 03/29 (S) Title Suff Do Pass As Amended
- 8 04/04 (S) Amended
- 9 04/04 (S) Passed As Amended [Vote]
- 10 04/09 (S) Returned For Concurrence
- 11 04/13 (H) Concurred in Amend From Senate [Vote]
- 12 04/18 (S) Enrolled Bill Signed
- 13 04/18 (H) Enrolled Bill Signed
- 14 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  [S] Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 833

**Code Section:** A 043-0001-0001, A 043-0001-0002, A 043-0001-0003, A 043-0001-0005, A 043-0027-0020, A 043-0001-0055, A 043-0027-0107

----- Additional Information -----

**2012 GENERAL LAWS OF MISSISSIPPI, HB 833**

*House Committee:* Youth and Family Affairs

*Senate Committee:* Public Health and Welfare, Appropriations

*Principal Author:* Formby

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 833

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Formby

To: Youth and Family Affairs

HOUSE BILL NO. 833  
(As Sent to Governor)

AN ACT TO AMEND SECTIONS 43-1-1 THROUGH 43-1-5 AND 43-27-20, MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE STATUTES WHICH ESTABLISH THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES AND PROVIDE FOR THE DIVISION OF COMMUNITY SERVICES IN THE DEPARTMENT OF HUMAN SERVICES; TO SPECIFY CERTAIN OFFICES WITHIN THE DEPARTMENT OF HUMAN SERVICES; TO PRESCRIBE THE CONTENT OF ANNUAL REPORTS BY THE DEPARTMENT OF HUMAN SERVICES; TO AMEND SECTIONS 43-1-55 AND 43-27-107, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALERS ON THE DUTY OF THE DEPARTMENT OF HUMAN SERVICES TO ESTABLISH EMPLOYMENT STANDARDS FOR FAMILY PROTECTION SPECIALISTS AND FAMILY PROTECTION WORKERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 43-1-1, Mississippi Code of 1972, is amended as follows:

43-1-1. (1) The Department of Human Services shall be the State Department of Public Welfare and shall retain all powers and duties as granted to the State Department of Public Welfare. Wherever the term "State Department of Public Welfare" or "State Board of Public Welfare" appears in any law, the same shall mean the Department of Human Services. The Executive Director of Human Services may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

(2) This section shall stand repealed on July 1, 2015.

**SECTION 2.** Section 43-1-2, Mississippi Code of 1972, is amended as follows:

43-1-2. (1) There is created the Mississippi Department of Human Services, whose offices shall be located in Jackson, Mississippi, and which shall be under the policy direction of the Governor.



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(2) The chief administrative officer of the department shall be the Executive Director of Human Services. The Governor shall appoint the Executive Director of Human Services with the advice and consent of the Senate, and he shall serve at the will and pleasure of the Governor, and until his successor is appointed and qualified. The Executive Director of Human Services shall possess the following qualifications:

(a) A bachelor's degree from an accredited institution of higher learning and ten (10) years' experience in management, public administration, finance or accounting; or

(b) A master's or doctoral degree from an accredited institution of higher learning and five (5) years' experience in management, public administration, finance or accounting.

Those qualifications shall be certified by the State Personnel Board.

(3) There shall be a Joint Oversight Committee of the Department of Human Services composed of the respective chairmen of the Senate Public Health and Welfare Committee, the Senate Appropriations Committee, the House Public Health and Human Services Committee and the House Appropriations Committee, three (3) members of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and three (3) members of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the Speaker. The chairmanship of the committee shall alternate for twelve-month periods between the Senate members and the House members, on May 1 of each year, with the Chairman of the Senate Public Health and Welfare Committee serving as chairman beginning in even-numbered years, and the Chairman of the House Public Health and Human Services Committee serving as chairman beginning in odd-numbered years. The committee shall meet once each quarter, or upon the call of the chairman at such times as he deems necessary or advisable, and may make recommendations to the

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Legislature pertaining to any matter within the jurisdiction of the Mississippi Department of Human Services. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the oversight committee. For attending meetings of the oversight committee, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the oversight committee without prior approval of the proper committee in their respective houses.

(4) The Department of Human Services shall provide the services authorized by law to every individual determined to be eligible therefor, and in carrying out the purposes of the department, the executive director is authorized:

(a) To formulate the policy of the department regarding human services within the jurisdiction of the department;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, all of which shall be binding upon the county departments of human services;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) Except as limited by Section 43-1-3, to enter into and execute contracts, grants and cooperative agreements with any

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federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the department; and

(e) To discharge such other duties, responsibilities and powers as are necessary to implement the programs of the department.

(5) The executive director shall establish the organizational structure of the Mississippi Department of Human Services which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law, including, but not limited to:

(a) Office of Family \* \* \* Children's Services;

(b) Office of Youth Services;

(c) Office of Economic Assistance;

(d) Office of Child Support Enforcement; or

(e) Office of Field Operations to administer any state or county level programs under the purview of the Mississippi Department of Human Services, with the exception of programs which fall under paragraphs (a) and (b) above.

(6) The Executive Director of Human Services shall appoint heads of offices, bureaus and divisions, as defined in Section 7-17-11, who shall serve at the pleasure of the executive director. The salary and compensation of such office, bureau and division heads shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq. The executive director shall have the authority to organize offices as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(7) This section shall stand repealed on July 1, 2015.

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**SECTION 3.** Section 43-1-3, Mississippi Code of 1972, is amended as follows:

43-1-3. Notwithstanding the authority granted under subsection (4)(d) of Section 43-1-2, the Department of Human Services or the Executive Director of Human Services shall not be authorized to delegate, privatize or otherwise enter into a contract with a private entity for the operation of any office, bureau or division of the department, as defined in Section 7-17-11, without specific authority to do so by general act of the Legislature. However, nothing in this section shall be construed to invalidate (i) any contract of the department that is in place and operational before January 1, 1994; or (ii) the continued renewal of any such contract with the same entity upon the expiration of the contract; or (iii) the execution of a contract with another legal entity as a replacement of any such contract that is expiring, provided that the replacement contract is substantially the same as the expiring contract.

This section shall stand repealed on July 1, 2015.

**SECTION 4.** Section 43-1-5, Mississippi Code of 1972, is amended as follows:

43-1-5. It shall be the duty of the Department of Human Services to:

(1) Establish and maintain programs not inconsistent with the terms of this chapter and the rules, regulations and policies of the Department of Human Services, and publish the rules and regulations of the department pertaining to such programs.

(2) Make such reports in such form and containing such information as the federal government may, from time to time, require, and comply with such provisions as the federal government may, from time to time, find necessary to assure the correctness and verification of such reports.

(3) Within ninety (90) days after the end of each fiscal year, and at each regular session of the Legislature, make and



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publish one (1) report to the Governor and to the Legislature, showing for the period of time covered, in each county and for the state as a whole:

- (a) The total number of recipients;
- (b) The total amount paid to them in cash;
- (c) The maximum and the minimum amount paid to any recipients in any one (1) month;
- (d) The total number of applications;
- (e) The number granted;
- (f) The number denied;
- (g) The number cancelled;
- (h) The amount expended for administration of the provisions of this chapter;
- (i) The amount of money received from the federal government, if any;
- (j) The amount of money received from recipients of assistance and from their estates and the disposition of same;
- (k) Such other information and recommendations as the Governor may require or the department shall deem advisable;
- (l) The number of state-owned automobiles purchased and operated during the year by the department, the number purchased and operated out of funds appropriated by the Legislature, the number purchased and operated out of any other public funds, the miles traveled per automobile, the total miles traveled, the average cost per mile and depreciation estimate on each automobile;
- (m) The cost per mile and total number of miles traveled by department employees in privately owned automobiles, for which reimbursement is made out of state funds;
- (n) Each association, convention or meeting attended by any department employees, the purposes thereof, the names of the employees attending and the total cost to the state of such convention, association or meeting;



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(o) How the money appropriated to the institutions under the jurisdiction of the department has been expended during the preceding year, beginning and ending with the fiscal year of each institution, exhibiting the salaries paid to officers and employees of the institutions, and each and every item of receipt and expenditure;

(p) The activities of each office within the Department of Human Services and recommendations for improvement of the services to be performed by each division.

\* \* \*

Each report shall be balanced and shall begin with the balance at the end of the preceding fiscal year, and if any property belonging to the state or the institution is used for profit, such report shall show the expenses incurred in managing the property and the amount received from the same. Such reports shall also show a summary of the gross receipts and gross disbursements for each fiscal year and shall show the money on hand at the beginning of the fiscal period of each division and institution of the department.

This section shall stand repealed on July 1, 2015.

**SECTION 5.** Section 43-27-20, Mississippi Code of 1972, is amended as follows:

43-27-20. (a) Within the Department of Youth Services there shall be a Division of Community Services which shall be headed by a director appointed by and responsible to the Director of the Department of Youth Services. He shall hold a master's degree in social work or a related field and shall have no less than three (3) years' experience in social services, or in lieu of such degree and experience, he shall have a minimum of eight (8) years' experience in social work or a related field. He shall employ and assign the community workers to serve in the various areas in the state and any other supporting personnel necessary to carry out the duties of the Division of Community Services.

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(b) The Director of the Division of Community Services shall assign probation and aftercare workers to the youth court or family court judges of the various court districts upon the request of the individual judge on the basis of case load and need, when funds are available. The probation and aftercare workers shall live in their respective districts except upon approval of the Director of the Division of Community Services. The Director of the Division of Community Services is authorized to assign a youth services counselor to a district other than the district in which the youth services counselor lives upon the approval of the youth court judge of the assigned district and the Director of the Division of Youth Services. Every placement shall be with the approval of the youth court or the family court judge, and a probation and aftercare worker may be removed for cause from a youth or family court district.

(c) Any counties or cities which, on July 1, 1973, have court counselors or similar personnel may continue using this personnel or may choose to come within the statewide framework.

(d) A probation and aftercare worker may be transferred by the division from one (1) court to another after consultation with the judge or judges in the court to which the employee is currently assigned.

(e) The Division of Community Services shall have such duties as the Department of Youth Services shall assign to it which shall include, but not be limited to, the following:

(1) Preparing the social, educational and home-life history and other diagnostic reports on the child for the benefit of the court or the training school; however, this provision shall not abridge the power of the court to require similar services from other agencies, according to law.

(2) Serving in counseling capacities with the youth or family courts.

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(3) Serving as probation agents for the youth or family courts.

(4) Serving, advising and counseling of children in the various institutions under the control of the Division of Juvenile Correctional Institutions as may be necessary to the placement of the children in proper environment after release and the placement of children in suitable jobs where necessary and proper.

(5) Supervising and guiding of children released or conditionally released from institutions under the control of the Division of Juvenile Correctional Institutions.

(6) Counseling in an aftercare program.

(7) Coordinating the activities of supporting community agencies which aid in the social adjustment of children released from the institution and in an aftercare program.

(8) Providing or arranging for necessary services leading to the rehabilitation of delinquents, either within the division or through cooperative arrangements with other appropriate agencies.

(9) Providing counseling and supervision for any child under ten (10) years of age who has been brought to the attention of the court when other suitable personnel is not available and upon request of the court concerned.

(10) Supervising the aftercare program and making revocation investigations at the request of the court.

(f) This section shall stand repealed on July 1, 2015.

**SECTION 6.** Section 43-1-55, Mississippi Code of 1972, is amended as follows:

43-1-55. (1) The Office of Family and Children's Services and the Division of Aging and Adult Services shall devise formal standards for employment as a family protection worker and as a family protection specialist within their respective offices and for service delivery designed to measure the quality of services delivered to clients, as well as the timeliness of services. Each

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family protection worker and family protection specialist shall be assessed annually by a supervisor who is a licensed social worker who is knowledgeable in the standards promulgated. The standards devised by each office shall be applicable to all family protection workers and family protection specialists working under that office.

(2) The Office of Family and Children's Services shall devise formal standards for family protection workers of the Department of Human Services who are not licensed social workers. Those standards shall require that:

(a) In order to be employed as a family protection worker, a person must have a bachelor's degree in either psychology, sociology, nursing, family studies, or a related field, or a graduate degree in either psychology, sociology, nursing, criminal justice, counseling, marriage and family therapy or a related field. The determination of what is a related field shall be made by certification of the State Personnel Board; and

(b) Before a person may provide services as a family protection worker, the person shall complete four (4) weeks of intensive training provided by the training unit of the Office of Family and Children's Services, and shall take and receive a passing score on the certification test administered by the training unit upon completion of the four-week training. Upon receiving a passing score on the certification test, the person shall be certified as a family protection worker by the Department of Human Services. Any person who does not receive a passing score on the certification test shall not be employed or maintain employment as a family protection worker for the department. Further, a person, qualified as a family protection worker through the procedures set forth above, shall not conduct forensic interviews of children until the worker receives additional specialized training in child forensic interview protocols and



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techniques by a course or curriculum approved by the Department of Human Services to be not less than forty (40) hours.

(3) For the purpose of providing services in child abuse or neglect cases, youth court proceedings, vulnerable adults cases, and such other cases as designated by the Executive Director of Human Services, the caseworker or service provider shall be a family protection specialist or a family protection worker whose work is overseen by a family protection specialist who is a licensed social worker.

(4) The Department of Human Services and the Office of Family and Children's Services shall seek to employ and use family protection specialists to provide the services of the office, and may employ and use family protection workers to provide those services only in counties in which there is not a sufficient number of family protection specialists to adequately provide those services in the county.

(5) (a) There is created a Training and Testing Advisory Council to review the department's program of training and testing of family protection workers and to make recommendations pertaining to the program to the department. The advisory council shall be composed of the following ten (10) members: two (2) employees of the department appointed by the Executive Director of Human Services, including one (1) representative of the Office of Family and Children's Services and one (1) representative of the Division of Aging and Adult Services; the Chairman of the Consortium of Accredited Schools of Social Work in Mississippi; and the executive director or a board member of a professional association or licensing board for each field of study named in subsection (2)(a) of this section, as follows: the Mississippi Chapter of the National Association of Social Workers; a marriage and family therapist who is a member of the Board of Examiners for Social Workers and Marriage and Family Therapists, to be selected by the four (4) members of the board of examiners who are marriage



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and family therapists; the Mississippi Nurses' Association; the Mississippi Prosecutors Association; the Mississippi Counseling Association; the Mississippi Psychological Association; and an officer of the Alabama-Mississippi Sociological Association who is a Mississippi resident elected by the executive committee of the association. The executive director of each association (excluding the Alabama-Mississippi Sociological Association) and chairman of the consortium may designate an alternate member to serve in his stead on the advisory council. Members of the advisory council shall serve without salary or per diem.

(b) A majority of the advisory council members shall select from their membership a chairperson to preside over meetings and a vice chairperson to preside in the absence of the chairperson or when the chairperson is excused. The advisory council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(6) This section and Section 43-27-107, Mississippi Code of 1972, shall stand repealed on July 1, 2015.

**SECTION 7.** Section 43-27-107, Mississippi Code of 1972, is amended as follows:

43-27-107. The Department of Human Services is authorized to set the qualifications necessary for all family protection specialists employed by the department, which shall at a minimum require that the applicant possess a baccalaureate degree in social work from a college or university accredited by the Council on Social Work Education or Southern Association of Colleges and Schools, unless the person was licensed as a social worker before September 1, 1994, pursuant to Section 73-53-7, Mississippi Code of 1972.

The qualifications for employment of a family protection specialist at the senior, advanced and supervisory grades shall

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require, in addition to those required of a family protection specialist, state licensure as a social worker.

The department shall not be required to go through the State Personnel Board or use the qualifications set by the Personnel Board in employing any family protection specialists for the department. All family protection specialists employed by the department shall be state service employees from the date of their employment with the department; however, to carry out its responsibilities, the department may use any available federal funds to employ such additional family protection specialists as it can employ in time-limited positions. All social worker positions existing before July 1, 1998, will remain state service.

This section shall stand repealed on July 1, 2015.

**SECTION 8.** This act shall take effect and be in force from and after June 30, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 885

**Description:** State agencies; revise procedure for approval of invoices submitted to.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Appropriations
- 2 03/01 (H) Title Suff Do Pass
- 3 03/07 (H) Passed {Vote}
- 4 03/08 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Accountability, Efficiency, Transparency
- 6 03/29 (S) Title Suff Do Pass
- 7 04/05 (S) Passed {Vote}
- 8 04/09 (S) Transmitted To House
- 9 04/12 (S) Enrolled Bill Signed
- 10 04/12 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** A 007-0007-0027

---- Additional Information ----

**House Committee:** Appropriations

**Senate Committee:** Accountability, Efficiency, Transparency

**Principal Author:** Frierson

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 885

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Frierson

To: Appropriations

HOUSE BILL NO. 885

AN ACT TO AMEND SECTION 7-7-27, MISSISSIPPI CODE OF 1972, TO DELETE THE PROVISION OF LAW REQUIRING THAT INVOICES FOR SALES OF GOODS AND SERVICES TO THE STATE MUST BE FILED FIRST WITH THE AGENCY INCURRING THE OBLIGATION FOR THAT AGENCY'S APPROVAL FOR PAYMENT BEFORE BEING FORWARDED TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; TO PROVIDE THAT SUCH INVOICES SHALL BE FILED WITH, CERTIFIED AND APPROVED BY THE AGENCY INCURRING THE OBLIGATION PURSUANT TO RULES AND REGULATIONS ESTABLISHED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 7-7-27, Mississippi Code of 1972, is amended as follows:

7-7-27. (1) All claims against the state as the result of purchases, services, salaries, travel expense, or other encumbrances made or liabilities incurred by any officer, department, division, board, commission, institution or other agency of the state authorized to incur such obligations, whether as the result of the issuance of purchase orders, as hereinabove provided, or not, shall be filed with, certified and approved by the agency incurring such obligation pursuant to rules and regulations established by the Department of Finance and Administration \* \* \*. These rules and regulations shall set forth certain circumstances where certification by the approving officers that the goods and services have been received or performed may be waived by the Department of Finance and Administration. Such waivers may pertain to, but should not be limited to, service contracts of limited time periods for lease of office space and equipment, computer software and subgrantee disbursements under federal grant programs.

\* \* \*

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 885

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 894

**Description:** Portable electronics insurance; require licensure of vendors to sell policies.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* January 1, 2013

**History of Actions:**

- 1 02/20 (H) Referred To Insurance
- 2 02/29 (H) Title Suff Do Pass Comm Sub
- 3 03/08 (H) Committee Substitute Adopted
- 4 03/08 (H) Passed *{Vote}*
- 5 03/09 (H) Transmitted To Senate
- 6 03/16 (S) Referred To Insurance
- 7 03/28 (S) Title Suff Do Pass
- 8 04/04 (S) Passed *{Vote}*
- 9 04/05 (S) Motion to Reconsider Entered
- 10 04/12 (S) Motion to Reconsider Tabled
- 11 04/12 (S) Transmitted To House
- 12 04/13 (H) Enrolled Bill Signed
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/19 Approved by Governor

---- Additional Information ----

*House Committee:* Insurance

*Senate Committee:* Insurance

*Principal Author:* Chism

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Chism

To: Insurance

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 894

AN ACT TO REQUIRE THE LICENSURE OF ANY VENDOR TO SELL, SOLICIT OR NEGOTIATE COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE; TO PROVIDE CERTAIN REQUIREMENTS FOR THE SALE OF PORTABLE ELECTRONICS INSURANCE; TO ALLOW EMPLOYEES, SUBSIDIARY CORPORATIONS AND AUTHORIZED REPRESENTATIVES OF VENDORS TO SELL PORTABLE ELECTRONICS INSURANCE TO CUSTOMERS WITHOUT LICENSURE UPON CERTAIN CONDITIONS; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE A LICENSE; TO PROVIDE FOR THE TERMINATION OR MODIFICATION OF A POLICY OF PORTABLE ELECTRONICS INSURANCE; TO PROVIDE THAT APPLICATIONS FOR LICENSURE AND FEES SHALL BE SUBMITTED TO THE DEPARTMENT OF INSURANCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1. Definitions.** For purposes of Section 1 through 8 of this act, the following terms have the following meanings:

(a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) "Commissioner" means the Commissioner of Insurance for the State of Mississippi.

(c) "Customer" means a person who purchases portable electronics or services.

(d) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(e) "Location" means any physical location in the State of Mississippi or any website, call center site or similar location directed to residents of the State of Mississippi.

(f) "Portable electronics" means electronic devices that are portable in nature, their accessories and services related to the use of the device.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

(g) (i) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. The insurance shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00).

(ii) "Portable electronics insurance" does not include:

1. A service contract governed by Section 75-24-91;
2. A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or
3. A homeowner's, renter's, private passenger automobile, commercial multiperil or similar policy.

(h) "Portable electronics transaction" means:

- (i) The sale or lease of portable electronics by a vendor to a customer; or
- (ii) The sale of a service related to the use of portable electronics by a vendor to a customer.

(i) "Portable electronics insurance producer" means a business entity required to be licensed under the laws of this state to sell, solicit or negotiate portable electronics insurance.

(j) "Subsidiary corporation" means any corporation in which a majority of the voting stock is owned, directly or indirectly, by another corporation.

(k) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is authorized by an insurer to supervise the administration of a portable electronics insurance program.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

(1) "Vendor" means a business entity in the business of selling, soliciting or negotiating portable electronics transactions directly or indirectly.

**SECTION 2. Licensure of vendors.** (1) A vendor is required to hold a portable electronics insurance producer license to sell, solicit or negotiate coverage under a policy of portable electronics insurance.

(2) A portable electronics insurance producer license issued under this act shall authorize any employee, subsidiary corporation or authorized representative of the vendor to sell, solicit or negotiate coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) Notwithstanding any other provision of law, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in those activities that are permitted in this section.

**SECTION 3. Requirements for sale of portable electronics insurance.** (1) At every location where portable electronics insurance is sold, solicited or negotiated to customers, brochures or other written materials shall be made available to a prospective customer which:

(a) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy or other source of coverage;

(b) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(c) Summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) Benefits of the coverage; and

(v) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(d) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(e) State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

(3) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

### **SECTION 4. Authority of vendors of portable electronics.**

(1) The employees, subsidiary corporations and authorized representatives of vendors may sell, solicit or negotiate portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this act provided that:

(a) The employee, subsidiary corporation or authorized representative is only engaged in the sale, solicitation or negotiation of portable electronics insurance;

(b) The vendor obtains a portable electronics insurance producer license to authorize its employees, subsidiary



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

corporations or authorized representatives to sell, solicit or negotiate portable electronics insurance pursuant to this act;

(c) The insurer issuing the portable electronics insurance either directly supervises or shall authorize a supervising entity to supervise the administration of the program including development of a training program for employees, subsidiary corporations and authorized representatives of the vendors. The training required by this paragraph (c) shall comply with the following:

(i) The training shall be delivered to employees, subsidiary corporations and authorized representatives of vendors who are directly engaged in the activity of selling, soliciting or negotiating portable electronics insurance;

(ii) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee, subsidiary corporation and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under Section 3 of this act;

(d) No employee, subsidiary corporation or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself out as a licensed portable electronics insurance producer.

(2) Notwithstanding any other provision of law, employees, subsidiary corporation or authorized representatives of a vendor of portable electronics shall not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage, but may receive compensation for activities

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

under the portable electronics insurance producer license which is incidental to their overall compensation.

(3) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting such charges shall not be required to maintain the funds in a segregated or trust account, provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits such amounts to the supervising entity within sixty (60) days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

**SECTION 5.** **Suspension or revocation of license.** (1) If a vendor of portable electronics or its employee, subsidiary corporation or authorized representative violates any provision of this section, the commissioner may do any of the following:

(a) After notice and hearing, impose fines not to exceed One Thousand Dollars (\$1,000.00) per violation or Thirty Thousand Dollars (\$30,000.00) in the aggregate for such violations and such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund."

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

(b) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this act, including, but not limited to:

(i) Suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred;

(ii) Suspending or revoking the ability of individual employees, subsidiary corporations or authorized representatives to act under the license; and

(iii) Placing on probation, suspending or revoking the license of the portable electronics insurance producer.

### **SECTION 6. Termination of portable electronics insurance.**

(1) Notwithstanding any other provision of law, the terms for the termination or modification of a policy of portable electronics insurance shall be as follows:

(a) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty (30) days' notice.

(b) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes.

(c) Notwithstanding paragraph (a) of this subsection, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen (15) days' notice for nonpayment of premium, discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder.

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(d) Notwithstanding paragraph (a) of this subsection, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(i) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(ii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(e) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days prior to the termination.

(2) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to the policy or is otherwise required by law, it shall be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it shall be sent to the vendor of portable electronics at the vendor's mailing address specified for such purpose and to its affected enrolled customers' last-known mailing addresses on file with the insurer. The insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 894

in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the vendor of portable electronics at the vendor's electronic mail address specified for such purpose and to its affected enrolled customers' last-known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, as the case may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronics, as the case may be, shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice or correspondence was sent.

(3) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity authorized by the insurer.

**SECTION 7.** **Application for license and fees.** (1) A sworn application for a license under this act shall be filed with the Mississippi Insurance Department on forms prescribed and furnished by the department.

(2) Portable electronics insurance producer licenses issued pursuant to this act shall continue from the date of issuance until December 31 in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.

(3) Each vendor of portable electronics licensed under this act shall pay to the Mississippi Insurance Department a fee of Five Thousand Dollars (\$5,000.00).

**SECTION 8.** The commissioner may promulgate reasonable rules and regulations to implement Sections 1 through 7 of this act.

**SECTION 9.** This act shall take effect and be in force from and after January 1, 2013.



Mississippi Legislature  
2012 Regular Session

House Bill 944

**Description:** State Fiscal Officer; revise provisions regarding drawing of warrants in excess of the available cash balance against federal programs.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Appropriations
- 2 03/01 (H) Title Suff Do Pass
- 3 03/07 (H) Passed *(Vote)*
- 4 03/08 (H) Transmitted To Senate
- 5 03/15 (S) Referred To Accountability, Efficiency, Transparency
- 6 04/02 (S) Title Suff Do Pass
- 7 04/05 (S) Passed *(Vote)*
- 8 04/09 (S) Transmitted To House
- 9 04/12 (S) Enrolled Bill Signed
- 10 04/12 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** A 007-0007-0039

----- Additional Information -----

**House Committee:** Appropriations

**Senate Committee:** Accountability, Efficiency, Transparency

**Principal Author:** Frierson

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 944

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Frierson

To: Appropriations

HOUSE BILL NO. 944

AN ACT TO AMEND SECTION 7-7-39, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE FISCAL OFFICER TO DRAW WARRANTS IN EXCESS OF THE CASH BALANCE THEN AVAILABLE IN THE PARTICULAR FUND AGAINST WHICH THE WARRANT IS CHARGEABLE WHEN THE WARRANT IS TO BE DRAWN AGAINST FEDERAL PROGRAMS IN WHICH FEDERAL FUNDS ARE RECEIPTED BASED UPON POLICIES AND PROCEDURES AS ESTABLISHED BY THE STATE FISCAL OFFICER OR IN OTHER SITUATIONS AS DEEMED NECESSARY BY THE STATE FISCAL OFFICER; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 7-7-39, Mississippi Code of 1972, is amended as follows:

7-7-39. The State Fiscal Officer shall not draw warrants without, or in excess of, appropriations of money for the purpose, except in those cases specifically provided for by law; nor shall the State Fiscal Officer draw warrants against budgeted funds until notified by certification that the budget for the current allotment period of the fiscal year for the department, institution, or agency concerned is in compliance with the appropriation, and the amount of the approved budget has been set up in the State Fiscal Officer's records; nor shall the State Fiscal Officer draw warrants in excess of the amount so budgeted and approved, nor shall the State Fiscal Officer draw any warrant in excess of the cash balance then available in the particular fund against which the warrant is chargeable unless the warrant is to be drawn against federal programs in which federal funds are receipted based upon policies and procedures as established by the State Fiscal Officer or in other situations as deemed necessary by the State Fiscal Officer.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 944

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 960

**Description:** Blind Persons' Literacy Rights and Education Act; revise.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Education
- 2 03/06 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Read the Third Time
- 4 03/15 (H) Committee Substitute Adopted
- 5 03/15 (H) Passed {Vote}
- 6 03/15 (H) Motion to Reconsider Entered (Byrd, Moore, Clarke)
- 7 03/15 (H) Motion to Reconsider W/Drawn
- 8 03/19 (H) Transmitted To Senate
- 9 03/20 (S) Referred To Education
- 10 04/03 (S) Title Suff Do Pass As Amended
- 11 04/04 (S) Amended
- 12 04/04 (S) Passed As Amended {Vote}
- 13 04/05 (S) Returned For Concurrence
- 14 04/13 (H) Concurred in Amend From Senate {Vote}
- 15 04/18 (S) Enrolled Bill Signed
- 16 04/18 (H) Enrolled Bill Signed
- 17 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* Voice Vote

  Amendment Report for House Bill No. 960

**Code Section:** A 037-0023-0193, A 037-0023-0194, A 037-0023-0195, A 037-0023-0197, A 037-0023-0199, A 037-0023-0201, A 037-0023-0203

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 960

### ----- Additional Information -----

*House Committee:* Education

*Senate Committee:* Education

*Principal Author:* Miles

*Additional Authors:* Aldridge, Bain, Brown (20th), Evans (43rd), Evans (91st), Hines, Holloway, Lane, Massengill, Moore, Nelson, Patterson, Steverson, Whittington, Martinson, Brown (66th), Arnold, Turner, Oberhousen, Clarke, Barton, Young, Baker, McGee, Weathersby, Jennings, Hamilton, Rogers (61st), Coleman (65th), Bounds, Dixon



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 960

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Miles, Aldridge, Bain, Brown (20th), Evans (43rd), Evans (91st), Hines, Holloway, Lane, Massengill, Moore, Nelson, Patterson, Steverson, Whittington, Martinson, Brown (66th), Arnold, Turner, Oberhausen, Clarke, Barton, Young, Baker, McGee, Weathersby, Jennings, Hamilton, Rogers (61st), Coleman (65th), Bounds, Dixon To: Education

### HOUSE BILL NO. 960 (As Sent to Governor)

AN ACT TO REVISE CERTAIN PROVISIONS OF THE BLIND PERSONS' LITERACY RIGHTS AND EDUCATION ACT; TO AMEND SECTION 37-23-193, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITIONS OF CERTAIN TERMS AND TO DEFINE ADDITIONAL TERMS USED IN THE ACT; TO AMEND SECTION 37-23-194, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BLIND AND VISUALLY IMPAIRED STUDENTS SHOULD RECEIVE EDUCATIONAL SERVICES FROM CERTIFIED TEACHERS OF THE VISUALLY IMPAIRED; TO AMEND SECTION 37-23-195, MISSISSIPPI CODE OF 1972, TO REQUIRE EACH APPROPRIATE EDUCATIONAL ENTITY TO PROVIDE FOR INSTRUCTION IN BRAILLE AND THE USE OF BRAILLE UNLESS THE IEP COMMITTEE DETERMINES, AFTER AN EVALUATION OF THE CHILD'S NEEDS, IF INSTRUCTION IN BRAILLE OR THE USE OF BRAILLE IS NOT APPROPRIATE FOR THE CHILD; TO REQUIRE ASSESSMENTS FOR STUDENTS TO INCLUDE A MINIMUM RESEARCH-BASED LEARNING MEDIA ASSESSMENT; TO PROHIBIT THE DENIAL OF INSTRUCTION IN BRAILLE TO STUDENTS WITH SOME RESIDUAL VISION; TO AMEND SECTION 37-23-197, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE STANDARD PROCEDURE TO BE USED BY THE IEP OR 504 TEAM THAT BRAILLE INSTRUCTION OR THE USE OF BRAILLE IS REQUIRED FOR BLIND STUDENTS; TO REQUIRE THE IEP OR 504 TEAM TO BASE ITS DECISION ON THE CURRENT ABILITY AND NEEDS AND FUTURE NEEDS OF STUDENTS, WHILE CONSIDERING THE APPROPRIATE READING AND WRITING MEDIA FOR CHILDREN WITH SOME RESIDUAL VISION; TO AMEND SECTION 37-23-199, MISSISSIPPI CODE OF 1972, TO REQUIRE TEXTBOOK PUBLISHERS THAT SELL BOOKS TO MISSISSIPPI SCHOOL DISTRICTS TO FURNISH AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE (ASCII) OR OTHER ELECTRONICALLY FORMATTED FILES COMPATIBLE WITH BRAILLE CONVERSION FOR ALL BOOKS AND SUPPLEMENTARY MATERIALS FOR LITERARY AND NONLITERARY SUBJECTS; TO REQUIRE THE STATE BOARD OF EDUCATION TO PROMULGATE AND PUBLISH REGULATIONS, POLICIES AND PROCEDURES FOR THE ADMINISTRATIVE OPERATION OF THE MISSISSIPPI INSTRUCTIONAL RESOURCE CENTER; TO AMEND SECTION 37-23-201, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE CERTIFICATION QUALIFICATIONS FOR SPECIALISTS IN BRAILLE WHO SERVE ON THE ADVISORY COMMITTEE; TO ESTABLISH THE TIME WITHIN WHICH THE STATE SUPERINTENDENT OF PUBLIC EDUCATION HAS TO RESPOND TO THE RECOMMENDATIONS OF THE ADVISORY COMMITTEE; TO AMEND SECTION 37-23-203, MISSISSIPPI CODE OF 1972, TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO RECOGNIZE BRAILLE AND ORIENTATION MOBILITY AS CORE SUBJECT AREAS FOR ALL BLIND STUDENTS; TO REQUIRE THE DEPARTMENT TO ADOPT A MINIMUM STANDARD FOR TEACHERS OF THE BLIND CERTIFIED AFTER JANUARY 1, 2010; TO ESTABLISH THE METHOD FOR DETERMINING COMPETENCY IN READING AND WRITING OF LITERARY BRAILLE AND NEMETH CODE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 960

**SECTION 1.** Section 37-23-193, Mississippi Code of 1972, is amended as follows:

37-23-193. For purposes of Sections 37-23-191 through 37-23-203, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly indicates otherwise:

(a) "Blind student" means an individual who is eligible for special education services or 504 services and who has an impairment in vision that, even with correction, adversely affects the student's educational performance. This includes a student who:

(i) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of less than twenty-one (21) degrees;

(ii) Has a medically indicated expectation of visual deterioration; or

(iii) Is functionally blind due to visual problems affecting reading and writing skills.

(b) "Braille" means the system of reading and writing through touch and includes literary code, designated commonly as the Unified English Braille Code or the Standard English Braille Code, Nemeth Braille Code for Mathematics and Science Notation, Music Braille Code and Computer Braille Code.

(c) "Individualized educational program" (IEP) means a statement developed for a student eligible for special education services under Section 602(a)(20) of Part B of the Individuals with Disabilities Education Act.

(d) "Assistive technology service" means any service or provision of devices which directly assists the functional capabilities of a blind or visually impaired student.

(e) "Compensatory skills" or "alternative techniques" means those skills or techniques needed by blind or visually

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 960

impaired students to access all areas of the Mississippi Curriculum Frameworks. These skills include, but are not limited to: the use of Braille, large print, optical devices, tactile symbols, calendar systems and abacus; study and organizational skills; listening skills; concept development; the use of assistive technology and recorded materials; social interaction; independent living; recreation and leisure skills; and career education.

(f) "504 Plan" means a legal document under the provisions of the Rehabilitation Act of 1973 which is designed to plan a program of instructional services to assist a student with specialized needs who is in a general education setting.

**SECTION 2.** Section 37-23-194, Mississippi Code of 1972, is amended as follows:

37-23-194. Contingent upon appropriated funding for teacher scholarships authorized under House Bill No. 1032, 2012 Regular Session, students who are blind or visually impaired shall receive educational services from the following types of specialized professionals:

(a) Certified Teachers of the Visually Impaired (TVI), who are trained professionals having specialized knowledge and skills in the education of students with visual impairments. These teachers shall provide consultative services and instruction to blind or visually impaired students in the areas of communication literacy, daily living, social and emotional skills, academic support and career education.

(b) Orientation and Mobility (O&M) Specialists, who are professionals trained and certified in orientation and mobility. O&M Specialists shall provide consultative services and instruction to blind or visually impaired students in tools and techniques used by blind or visually impaired individuals to orient themselves and move independently and safely in their environments.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 960

(c) Teachers of the Visually Impaired (TVI), who are competent in reading and writing Literary Braille and Nemeth Code as certified by successful passage of the Mississippi Praxis II Braille Competency Exam.

**SECTION 3.** Section 37-23-195, Mississippi Code of 1972, is amended as follows:

37-23-195. (1) Each appropriate educational entity shall provide for the development of an IEP or 504 Plan for each blind or visually impaired student eligible for educational services or equipment, or both, under Sections 37-23-1 through 37-23-157. In developing the written IEP or 504 Plan for each blind or visually impaired student, there shall be a presumption that proficiency in Braille reading and writing is essential for the student to achieve satisfactory educational progress.

(2) Each appropriate educational entity, in compliance with 20 USCS Section 1414(d)(3)(B)(iii), the Individuals with Disability Education Act, as reauthorized in 2004, shall provide for instruction in Braille and the use of Braille unless the IEP Committee determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child.

(3) The assessment required for each student shall be conducted by a TVI and shall include, at a minimum, a research-based learning media assessment and functional vision assessment, and if necessary in the determination of the IEP Committee, a comprehensive assistive technology evaluation. The assessment shall include a statement of the student's academic and functional strengths, deficits and future needs. If, in the course of developing a student's IEP or 504 Plan or in the review of the research-based assessment and consideration of a student's future needs, the majority of the members of the team concur that



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the student's visual impairment and future needs do not affect reading and writing performance commensurate with ability, then Braille instruction and its use shall not be required by this section for that student. Nothing in this section shall require the exclusive use of Braille when other specialized educational services and assistive technology devices are determined more appropriate by the IEP Committee for the student's educational needs. \* \* \*

(4) No student shall be denied the opportunity for instruction in Braille reading and writing only because the student has some residual vision.

**SECTION 4.** Section 37-23-197, Mississippi Code of 1972, is amended as follows:

37-23-197. (1) Each blind student, as determined by the IEP Committee, shall be eligible for instruction in Literary and Nemeth Braille reading and writing codes which will sufficiently enable that student to communicate effectively and efficiently with the same level of proficiency expected of the student's peers of comparable ability and grade level.

(2) It shall be the standard procedure for the IEP or 504 Team under Section 37-23-195 that Braille instruction or the use of Braille is required for the student, and the student's IEP or 504 Plan must be written in consultation with a Certified Teacher of the Visually Impaired.

(3) If the IEP or 504 team determines procedures other than the standard for the appropriate reading and writing media of a student are required, its decision must be based on the current ability and needs as well as the future needs of the student, considering the following:

(a) For a student with some residual vision where the team decides that large print, or large print in combination with Braille, is the appropriate reading and writing media, then that decision must be supported by a statement from a TVI declaring



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that the appropriate reading and writing media for that student is not Braille; and

(b) The reading and writing media of a student with some residual vision shall be determined after a TVI has administered and reviewed the results of a research-based learning media assessment and reviewed a student's current reading and writing skill level in comparison to levels expected of the student's sighted peers as determined by the IEP Committee.

**SECTION 5.** Section 37-23-199, Mississippi Code of 1972, is amended as follows:

37-23-199. (1) All textbook publishers that sell textbooks published after December 2008 to school districts within the state must furnish the State Department of Education with computer files for literary and nonliterary subjects in the National Instructional Media Access Standard (NIMAS) from which Braille, audio and large print versions of the textbooks can be produced. The publishers also shall furnish the department with NIMAS files, American Standard Code for Information Interchange (ASCII) or other electronically formatted files compatible with Braille conversion for all adopted textbooks and supplementary materials, in both literary and nonliterary subjects, including natural sciences, computer science, mathematics and music, published after December 2008. All books purchased must have appropriate accompanying reproduction files.

(2) The State Board of Education shall promulgate and publish regulations, policies, and procedures for the administrative operation of the Mississippi Instructional Resource Center (MIRC) to further assure that blind and visually impaired students are annually identified and registered in order that all materials and textbooks required by blind and visually impaired students are received and distributed at the same time and in the same manner as textbooks and materials for their sighted peers.

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The MIRC manual must address, but is not limited to, addressing the following:

(a) The Federal Quota Program, established to promote the educational interests of blind and visually impaired students, which qualifies the state for funds from American Printing House for the Blind;

(b) The on-time delivery of textbooks and materials to blind and visually impaired students, so that the delivery of Braille and large print textbooks and all related supplementary materials will be commensurate with the delivery of regular print textbooks and materials for sighted students as outlined in textbook policies and procedures effective January 1, 2013; and

(c) Communication policies between MIRC, the department and local school districts designating a timeline for book orders, confirmations of orders, status and tracking of orders, delivery dates of orders and the return of books at the end of use by a district.

(3) The board also shall develop and publish policies and procedures for support for district level production of literary and nonliterary Braille textbooks and materials by August 1, 2013, in order to better facilitate the on-time delivery of textbooks to blind and visually impaired students.

**SECTION 6.** Section 37-23-201, Mississippi Code of 1972, is amended as follows:

37-23-201. (1) Before December 1, 2008, the State Board of Education shall appoint an ongoing Advisory Committee to expedite the implementation of Sections 37-23-191 through 37-23-203. The Advisory Committee shall be composed of at least twelve (12) persons nominated by the State Superintendent of Public Education from within or outside of the state, including, but not limited to, representatives of the following groups:

- (a) The National Federation of the Blind;
- (b) The Mississippi Council of the Blind;

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- (c) A parent or guardian of a blind student;
- (d) The Coalition for Citizens with Disabilities;
- (e) Special education directors having one or more blind or visually impaired students in their respective school districts;
- (f) Specialists in Braille education or deaf-blindness or certified teachers of the blind and visually impaired students, or both. Specialists in Braille shall be deemed competent in reading and writing Literary Braille and Nemeth Code as certified by successful passage of the Mississippi Praxis II Braille Competency Exam and/or certified under National Certification in Literary Braille;
- (g) Employees of the State Department of Education;
- (h) Consumers, or an advocate of consumers, of Braille materials;
- (i) The Mississippi School for the Blind;
- (j) The Mississippi Instructional Resource Center; and
- (k) Individuals from higher education programs that address issues specific to visual impairment.

(2) The State Superintendent of Public Education shall appoint a chairperson from among the members of the Advisory Committee. The committee shall meet at least semiannually upon the call of the superintendent, and its functions shall be to perform the duties prescribed in subsection (3) of this section. Members of the committee shall receive no compensation or per diem, but each member shall be entitled to reimbursement for all actual and necessary expenses incurred by his participation in the committee's activities.

(3) The committee shall perform the following duties:

- (a) Provide expertise to maximize collaboration with the National Instructional Materials Access Center (NIMAC) at the American Printing House for the Blind and, when necessary, textbook publishers on the development of NIMAS and associated

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graphics files to be converted into accessible textbooks with translation software;

(b) Recommend potential authorized users for the NIMAS program to the State Director of Special Education to ensure that all accessible textbook needs are met within the state on a timely basis, being no later than such time that all other students receive their corresponding textbooks;

(c) Study any other issues that the committee determines are relevant and necessary to the implementation of this article and to the improvement of the education of students who are blind or visually impaired in Mississippi; and

(d) Assist the State Department of Education in promulgating regulations, policies and procedures in implementing Sections 37-23-191 through 37-23-203.

(4) The State Superintendent of Public Education shall respond to the recommendations of the Advisory Committee within sixty (60) days of the annually published report.

**SECTION 7.** Section 37-23-203, Mississippi Code of 1972, is amended as follows:

37-23-203. (1) As part of the certification process, teachers certified in the education of blind and visually impaired students shall be required to demonstrate competence in reading and writing Braille after January 1, 2010. The State Department of Education shall adopt procedures to assess such competencies.

(2) The department shall recognize Braille and Orientation & Mobility as core subject areas for all blind students, as deemed appropriate by the IEP Committee for all areas of the Expanded Core Curriculum (ECC). The department shall adopt proficiency and competency in reading and writing of Literary Braille and Nemeth Code as a minimal standard for all teachers of the blind certified after January 1, 2010.



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(3) Competency in reading and writing Literary Braille and Nemeth Code must be exhibited by an individual passing the Mississippi Praxis II Braille Competency Exam.

(4) The adoption of Braille as a core subject for blind and visually impaired students recognizes that the teaching of Braille is a unique educational need unparalleled by any other subject or skill taught to either general or special education students.

(5) The Expanded Core Curriculum (ECC) is the body of knowledge and skills that are needed by students with visual impairments due to their unique disability-specific needs. Students with visual impairments need the Expanded Core Curriculum in addition to the core academic curriculum of general education. The ECC should be used as a framework for assessing students, planning individual goals and providing instruction. The ECC includes compensatory or functional academic skills, including communication modes, orientation and mobility, social interaction skills, independent living skills, recreation and leisure skills, career education, use of assistive technology, sensory efficiency skills and self-determination.

**SECTION 8.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 984

**Description:** Utility service vehicle, stationary; require motor vehicle operators to perform certain maneuvers when approaching.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Public Utilities;Transportation
- 2 02/29 (H) DR - TSDPCS: PU To TR
- 3 03/06 (H) DR - TSDPCS: TR To PU
- 4 03/06 (H) Title Suff Do Pass Comm Sub
- 5 03/09 (H) Committee Substitute Adopted
- 6 03/09 (H) Passed {Vote}
- 7 03/13 (H) Transmitted To Senate
- 8 03/15 (S) Referred To Judiciary, Division B
- 9 04/03 (S) Title Suff Do Pass
- 10 04/10 (S) Passed {Vote}
- 11 04/11 (S) Transmitted To House
- 12 04/13 (H) Enrolled Bill Signed
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/19 Approved by Governor

**Code Section:** A 063-0003-0809

----- Additional Information -----

**House Committee:** Public Utilities, Transportation

**Senate Committee:** Judiciary, Division B

**Principal Author:** Beckett

**Additional Authors:** Bounds

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 984

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Beckett, Bounds

To: Public Utilities;  
Transportation

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 984

AN ACT TO AMEND SECTION 63-3-809, MISSISSIPPI CODE OF 1972, TO REQUIRE MOTOR VEHICLE OPERATORS TO PERFORM CERTAIN TRAFFIC SAFETY MANEUVERS WHEN APPROACHING A STATIONARY UTILITY SERVICE VEHICLE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 63-3-809, Mississippi Code of 1972, is amended as follows:

63-3-809. (1) Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a law enforcement officer.

(2) Upon approaching a stationary authorized emergency vehicle, when such vehicle is giving a signal by use of flashing, blinking, oscillating or rotating lights, as authorized under Section 63-7-19, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and

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being prepared to stop, if changing lanes would be impossible or unsafe.

(3) Upon approaching a stationary recovery vehicle, a utility service vehicle or a highway maintenance vehicle, when such vehicle is giving a signal by use of authorized flashing lights, a person who drives an approaching vehicle shall:

(a) Proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to the stationary recovery vehicle, the utility service vehicle or the highway maintenance vehicle, if possible with due regard to safety and traffic conditions, if on a roadway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(b) Proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions and being prepared to stop, if changing lanes would be impossible or unsafe.

(4) For purposes of this section, unless the context otherwise clearly requires:

(a) "Highway maintenance vehicle" means a vehicle used for the maintenance of highways and roadways in this state and is:

(i) Owned or operated by the Department of Transportation, a county, a municipality or other political subdivision of this state; or

(ii) Owned or operated by a contractor under contract with the Department of Transportation, a county, a municipality or other political subdivision of this state;

(b) "Recovery vehicle" means a truck that is specifically designed for towing a disabled vehicle or a combination of vehicles.

(c) "Utility service vehicle" means a vehicle used by any person, municipality, county, electric cooperative, corporation, board, commission, district or any entity created or

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authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telecommunications services or any combination thereof, for sale to consumers in any particular service area, or by any contractor under contract with any such entity.

(5) A violation of this section is a misdemeanor punishable by a fine:

(a) Of not more than Two Hundred Fifty Dollars (\$250.00); or

(b) Of not more than One Thousand Dollars (\$1,000.00) if violation of this section results in:

(i) Property damage to the emergency vehicle, highway maintenance vehicle, utility service vehicle or recovery vehicle; or

(ii) Bodily injury to the driver or a passenger of any such vehicle.

(6) This section shall not operate to relieve the driver of an authorized emergency vehicle, a recovery vehicle, a utility service vehicle or a highway maintenance vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 993

**Description:** Primary election contests; may be heard only by circuit judges.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* VRA

**History of Actions:**

- 1 02/20 (H) Referred To Apportionment and Elections
- 2 02/29 (H) Title Suff Do Pass
- 3 03/13 (H) Passed {Vote}
- 4 03/14 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Judiciary, Division A
- 6 04/03 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/13 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (S) Enrolled Bill Signed
- 12 04/18 (H) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 993

**Code Section:** A 023-0015-0927, A 023-0015-0929, A 023-0015-0931, A 023-0015-0937, A 023-0015-0939, A 023-0015-0961

----- Additional Information -----

**House Committee:** Apportionment and Elections

**Senate Committee:** Judiciary, Division A

**Principal Author:** Denny



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 993

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Denny

To: Apportionment and  
Elections

HOUSE BILL NO. 993  
(As Sent to Governor)

AN ACT TO AMEND SECTIONS 23-15-927, 23-15-929, 23-15-931, 23-15-937, 23-15-939 AND 23-15-961, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ELECTION CONTESTS INVOLVING DECISIONS OF EXECUTIVE COMMITTEES SHALL BE HEARD ONLY BY CIRCUIT COURT JUDGES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 23-15-927, Mississippi Code of 1972, is amended as follows:

23-15-927. When and after any contest has been filed with the county executive committee, or complaint with the State Executive Committee, and the \* \* \* executive committee having jurisdiction fails to promptly meet or, having met, fails or unreasonably delays to fully act upon the contest or complaint or fails to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county in which the irregularities are charged to have occurred, or, if more than one (1) county is involved, then in one (1) of the counties, a sworn copy of his \* \* \* protest or complaint, together with a sworn petition, setting forth with particularity how the executive committee has wrongfully failed to act or to fully and promptly investigate or has wrongfully denied the relief prayed by the contest, with a prayer for a judicial review thereof. A petition for judicial review must be filed within ten (10) days after any contest or complaint has been filed with an executive committee. The petition for a judicial review shall not be filed unless it bears the certificate of two (2) practicing attorneys stating that they \* \* \* have each fully made an independent investigation into

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the matters of fact and of law upon which the protest and petition are based, and that after the investigation they \* \* \* believe that the \* \* \* protest and petition should be sustained and that the relief \* \* \* prayed in the protest and petitions should be granted; the two (2) attorneys may not be practicing in the same law firm. The petitioner shall give a cost bond in the sum of Three Hundred Dollars (\$300.00), with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the judge \* \* \*, if necessary, at any subsequent stage of the proceedings. The filing of the petition for judicial review in the manner set forth in this section shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee appealed from. In no event shall a prayer for relief be filed in any court other than the appropriate circuit court as authorized in this section.

**SECTION 2.** Section 23-15-929, Mississippi Code of 1972, is amended as follows:

23-15-929. Upon the filing of the petition \* \* \* and bond as provided for in Section 23-15-927, the circuit clerk shall immediately, by registered letter or by telegraph or telephone, or personally, notify the Chief Justice of the Supreme Court, or, in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or a retired judge on senior status \* \* \* of a district other than that which embraces the county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed \* \* \* to hear and determine the contest or complaint, and it shall be the official duty of the \* \* \* trial judge \* \* \* to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge \* \* \* and of which the contestant and contestee shall have reasonable notice, to be served in such reasonable manner as the

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judge \* \* \* may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if \* \* \* he has one to prefer.

**SECTION 3.** Section 23-15-931, Mississippi Code of 1972, is amended as follows:

23-15-931. When the day for the hearing has been set, the circuit clerk shall issue subpoenas for witnesses as in other litigated cases, and he shall also issue a summons to each of the five (5) election commissioners of the county, unless they waive summons, requiring them to attend the hearing, throughout which \* \* \* the \* \* \* commissioners shall sit with the judge \* \* \* as advisors or assistants in the trial and determination of the facts, and as assistants in counts, calculations and inspections, and in seeing to it that ballots, papers, documents, books and the like are diligently secured against misplacement, alteration, concealment or loss both in the sessions and during recesses or adjournments. The judge \* \* \* is, however, the controlling judge both of the facts and the law, and has all the power in every respect of a circuit judge in termtime. The tribunal shall be attended by the sheriff, and clerk, each with sufficient deputies, and by a court reporter. The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint has been fully heard anew, shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice, or if the matter be one within the jurisdiction of the State Executive Committee, the judgment shall be certified and

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promptly forwarded to the Secretary of the State Executive Committee, and, in the absence of an appeal, it shall be the duty of the State Executive Committee forthwith to reassemble and revise any decision theretofore made by it so as to conform to the judicial judgment; \* \* \* that when the contest is upon a complaint filed with the State Executive Committee and the petition to the court avers that the wrong or irregularity is one which occurred wholly within the proceedings of the state committee, the petition to the court shall be filed in the Circuit \* \* \* Court of Hinds County and, after notice served, shall be promptly heard by the circuit judge \* \* \* of that county, without the attendance of commissioners.

**SECTION 4.** Section 23-15-937, Mississippi Code of 1972, is amended as follows:

23-15-937. If more than one (1) county is involved in a contest or complaint, the judge \* \* \* shall have the authority to transfer the hearing to a more convenient county within the district, if the contest or complaint involves a district office, or within the state if the contest or complaint involves a state office; or the judge \* \* \* may proceed to any county or counties in which the facts complained of are charged to have transpired, and there hear the evidence and make a finding of facts relating to that county and any convenient neighboring county or counties, but, in any event, if possible with due diligence to do so, the hearing must be completed and final judgment rendered in time to permit the printing and distribution of the official ballots at the election for which the contested nomination is made. When any judge \* \* \* lawfully designated to hear a contest or complaint \* \* \* shall not promptly and diligently proceed with the hearing and final determination of the contest or complaint, he shall be guilty of a high misdemeanor in office unless excused by actual illness, or by an equivalent excuse. When no final decision has been made by the time the official ballots are



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required to be printed, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee, but the contest or complaint shall not thereby be dismissed but the cause shall nevertheless proceed to final judgment and if the \* \* \* judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the Governor, or the Lieutenant Governor, in case the Governor is a party to the contest, shall call a special election for the office or offices involved. If the contestee has already entered upon the term he shall vacate the office upon the qualification of the person elected at the special election, and may be removed by quo warranto if he fail so to do.

**SECTION 5.** Section 23-15-939, Mississippi Code of 1972, is amended as follows:

23-15-939. The reasonable traveling expenses of the judge \* \* \* shall be paid by order of the board of supervisors of the county or counties in which a contest or complaint \* \* \* is heard, upon an itemized certificate thereof by the judge \* \* \*. The election commissioners shall be compensated for their services rendered under this section as is provided in Section 23-15-227.

**SECTION 6.** Section 23-15-961, Mississippi Code of 1972, is amended as follows:

23-15-961. (1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. The petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described in subsection (1) of this section, the appropriate executive committee shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition,



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the appropriate executive committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at that meeting and present evidence in support of his position.

(3) If the appropriate executive committee fails to rule upon the petition within the time required in subsection (2) of this section, that inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate executive committee may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits. The petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee. The person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars (\$300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) Upon the filing of the petition and bond, the circuit clerk shall immediately, by registered letter or by telegraph or by telephone, or personally, notify the Chief Justice of the Supreme Court, or in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify \* \* \* a circuit judge or retired judge on senior status \* \* \* of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. It shall be the official duty of the trial judge \* \* \* to proceed to the discharge of the designated duty at

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the earliest possible date to be fixed by the judge \* \* \* and of which the contestant and contestee shall have reasonable notice. The contestant and contestee are to be served in a reasonable manner as the judge \* \* \* may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has a cross-complaint. The hearing before the trial court shall be de novo. The matter shall be tried to the trial judge, without a jury. After hearing the evidence, the trial judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The trial judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars (\$300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate executive committee is entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall

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have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth in this section shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election. After a party nominee has been elected to public office, the election may be challenged as otherwise provided by law. After a party nominee assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

**SECTION 7.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 8.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Mississippi Legislature  
2012 Regular Session

House Bill 994

**Description:** Election day disputes; clarify availability of judges to hear.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* VRA

**History of Actions:**

- 1 02/20 (H) Referred To Apportionment and Elections
- 2 02/29 (H) Title Suff Do Pass
- 3 03/13 (H) Passed {Vote}
- 4 03/14 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Judiciary, Division A
- 6 04/03 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/13 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (S) Enrolled Bill Signed
- 12 04/18 (H) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* *Voice Vote*

  Amendment Report for House Bill No. 994

**Code Section:** A 023-0015-0913

---- Additional Information ----

**House Committee:** Apportionment and Elections

**Senate Committee:** Judiciary, Division A

**Principal Author:** Denny

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 994

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Denny

To: Apportionment and  
Elections

HOUSE BILL NO. 994  
(As Sent to Governor)

AN ACT TO AMEND SECTION 23-15-913, MISSISSIPPI CODE OF 1972,  
TO CLARIFY THE MANNER IN WHICH THE SUPREME COURT MAKES JUDGES  
AVAILABLE TO HEAR ELECTION DAY DISPUTES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 23-15-913, Mississippi Code of 1972, is  
amended as follows:

23-15-913. The judges \* \* \* selected to hear election  
disputes \* \* \* shall be available on election day to immediately  
hear and resolve any election day disputes. The rules for filing  
pleadings shall be relaxed to carry out the purposes of this  
section. The judges selected shall perform no other judicial  
duties on election day. The Supreme Court shall make judges  
available to hear disputes in the county in which the disputes  
occur but no judge shall hear disputes in the district,  
subdistrict or county in which he was elected nor shall any judge  
hear any dispute in which any potential conflict may arise. Each  
judge shall be fair and impartial and shall be assigned on that  
basis.

**SECTION 2.** The Attorney General of the State of Mississippi  
shall submit this act, immediately upon approval by the Governor,  
or upon approval by the Legislature subsequent to a veto, to the  
Attorney General of the United States or to the United States  
District Court for the District of Columbia in accordance with the  
provisions of the Voting Rights Act of 1965, as amended and  
extended.



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 994

**SECTION 3.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Mississippi Legislature  
2012 Regular Session

House Bill 995

**Description:** Absentee ballots; require registrar to process all received and delivered through the Statewide Election Management System.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* VRA

**History of Actions:**

- 1 02/20 (H) Referred To Apportionment and Elections
- 2 02/29 (H) Title Suff Do Pass
- 3 03/13 (H) Passed {Vote}
- 4 03/14 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Elections
- 6 04/02 (S) Title Suff Do Pass As Amended
- 7 04/04 (S) Amended
- 8 04/04 (S) Passed As Amended {Vote}
- 9 04/05 (S) Returned For Concurrence
- 10 04/11 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (H) Enrolled Bill Signed
- 12 04/18 (S) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 995

**Code Section:** A 023-0015-0033, A 023-0015-0625, A 023-0015-0657, A 023-0015-0687, A 023-0015-0733, BF 023-0015-0035

----- **Additional Information** -----

**House Committee:** Apportionment and Elections

**2012 GENERAL LAWS OF MISSISSIPPI, HB 995**

*Senate Committee:* Elections

*Principal Author:* Denny

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Denny

To: Apportionment and  
Elections

HOUSE BILL NO. 995  
(As Sent to Governor)

AN ACT TO AMEND SECTION 23-15-33, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT EVERY PERSON ENTITLED TO VOTE BY ABSENTEE BALLOT SHALL HAVE ALL ABSENTEE APPLICATIONS PROCESSED BY THE REGISTRAR THROUGH THE STATEWIDE ELECTION MANAGEMENT SYSTEM; TO PROVIDE THAT THE REGISTRAR SHALL ACCOUNT FOR ALL ABSENTEE BALLOTS DELIVERED TO SUCH VOTERS AND RECEIVED FROM SUCH VOTERS THROUGH THE STATEWIDE ELECTION MANAGEMENT SYSTEM; TO AMEND SECTION 23-15-625, MISSISSIPPI CODE OF 1972, TO REQUIRE THE REGISTRAR TO PROCESS ALL APPLICATIONS FOR ABSENTEE BALLOTS BY USING THE STATEWIDE ELECTION MANAGEMENT SYSTEM; TO AMEND SECTIONS 23-15-657, 23-15-687 AND 23-15-733, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS; TO BRING FORWARD SECTION 23-15-35, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 23-15-33, Mississippi Code of 1972, is amended as follows:

23-15-33. (1) Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his name on and properly completed the application for registration to vote shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(2) Every person entitled to be registered as an elector in compliance with the laws of this state and who registers to vote pursuant to the National Voter Registration Act of 1993 shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(3) Every person entitled to vote by absentee shall have all absentee applications processed by the registrar through the Statewide Election Management System. The registrar shall account

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

for all absentee ballots delivered to such voters and received from such voters through the Statewide Election Management System.

**SECTION 2.** Section 23-15-625, Mississippi Code of 1972, is amended as follows:

23-15-625. (1) The registrar shall be responsible for providing applications for absentee voting as provided in this section. At least sixty (60) days prior to any election in which absentee voting is provided for by law, the registrar shall provide a sufficient number of applications. In the event a special election is called and set at a date which makes it impractical or impossible to prepare applications for absent elector's ballot sixty (60) days prior to the election, the registrar shall provide applications as soon as practicable after the election is called. The registrar shall fill in the date of the particular election on the application for which the application will be used.

(2) The registrar shall be authorized to disburse applications for absentee ballots to any qualified elector within the county where he serves. Any person who presents to the registrar an oral or written request for an absentee ballot application for a voter entitled to vote absentee by mail, other than the elector who seeks to vote by absentee ballot, shall, in the presence of the registrar, sign the application and print on the application his or her name and address and the name of the elector for whom the application is being requested in the place provided for on the application for that purpose. However, if for any reason such person is unable to write the information required, then the registrar shall write the information on a printed form which has been prescribed by the Secretary of State. The form shall provide a place for such person to place his mark after the form has been filled out by the registrar.

(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

skilled nursing facility as defined in Section 41-7-173. This prohibition shall not apply to:

(a) A family member of the person staying in the skilled nursing facility; or

(b) A person designated by the person for whom the absentee ballot application or absentee ballot is sought, the registrar or the deputy registrar.

As used in this subsection, "family member" means a spouse, parent, grandparent, sibling, adult child, grandchild or legal guardian.

(4) The registrar in the county wherein a voter is qualified to vote upon receiving the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots, which list shall be kept in a conspicuous place accessible to the public near the entrance to his office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee ballots to be posted in a conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose ballots are in the box.

(5) The registrar shall also be authorized to mail one (1) application to any qualified elector of the county for use in a particular election.

(6) The registrar shall process all applications for absentee ballots by using the Statewide Election Management System. The registrar shall account for all absentee ballots

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

delivered to and received from qualified voters by processing such ballots using the Statewide Election Management System.

**SECTION 3.** Section 23-15-657, Mississippi Code of 1972, is amended as follows:

23-15-657. The registrar is authorized to accept requests for absentee ballots by telephone. When a telephone request that an absentee ballot application be mailed by the registrar to an elector is made, the registrar shall ascertain the name and complete address of the person making the telephone request and shall print upon the absentee ballot application the name and complete address of the requestor and the relation of such person to the voter if requested by a person other than the voter and the date such request was made. Such requests shall be processed through the Statewide Election Management System.

**SECTION 4.** Section 23-15-687, Mississippi Code of 1972, is amended as follows:

23-15-687. (1) The registrar shall keep all applications for absentee ballots and shall, within twenty-four (24) hours, if possible, send to the absent voter on whose behalf the application is made, the proper affidavit and the proper ballot or ballots applicable to the elections. Such information shall be processed through the Statewide Election Management System.

(2) One (1) application for an absentee ballot shall serve as a request by the applicant for an absentee ballot for:

(a) The next federal general election, including all primary elections associated with the election;

(b) All state and county primary and general elections that occur after the receipt of the application by the registrar through the date of the next federal general election that occurs after the receipt of the application by the registrar.

(3) The registrar shall preserve all applications for absentee ballots for one (1) year as a record to be furnished to

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

any court or other duly constituted authority for inspection or evidence if properly requested.

(4) If the registrar rejects an application for an absentee ballot or denies a request to register to vote from a uniformed services applicant or an overseas voter, the registrar shall provide the person with the reasons for the rejection.

(5) Any runoff election for a federal election shall be considered a continuation of such federal election.

**SECTION 5.** Section 23-15-733, Mississippi Code of 1972, is amended as follows:

23-15-733. The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the election. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election. Such information shall be processed through the Statewide Election Management System.

**SECTION 6.** Section 23-15-35, Mississippi Code of 1972, is brought forward as follows:

**[For municipalities that do not provide the information as required by Section 1 of Chapter 532, Laws of 2008, until January 1, 2010, this section shall read as follows:]**

23-15-35. (1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The governing authorities shall provide suitable municipal registration books, which shall conform as nearly as practicable to the county registration books. The registrar shall, as nearly as may be practicable, and where not otherwise provided, comply

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

with all the provisions of law regarding state and county elections in keeping and maintaining such registration books and in registering voters thereon. Applications for registration as electors of the municipality shall be made upon a triplicate form provided by and prepared at the expense of the county registrar, which form shall conform as nearly as practicable to the application for registration form provided for in Section 23-15-39.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

(3) The municipal clerk shall issue to the person making the application a copy of the application, and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

**[From and after June 1, 2008, for municipalities that provide the information as required by Section 1 of Chapter 532, Laws of 2008, and for all other municipalities from and after January 1, 2010, this section shall read as follows:]**

23-15-35. (1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The municipal registration shall conform to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. The municipal clerk shall comply with all the provisions of law regarding the registration of voters, including the use of the voter registration applications used by county registrars and prescribed by the Secretary of State under Sections 23-15-39 and 23-15-47.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

(5) The municipal clerk of each municipality shall provide the circuit clerk of the county in which the municipality is located the information necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. If any changes to the information occur as a result of redistricting, annexation or

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 995

other reason, it shall be the responsibility of the municipal clerk to timely provide the changes to the circuit clerk.

**SECTION 7.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 8.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Mississippi Legislature  
2012 Regular Session

House Bill 998

**Description:** Counties; increase the minimum acquisition costs of items and services.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To County Affairs
- 2 02/28 (H) Title Suff Do Pass
- 3 03/08 (H) Passed {Vote}
- 4 03/09 (H) Transmitted To Senate
- 5 03/16 (S) Referred To County Affairs
- 6 04/03 (S) Title Suff Do Pass
- 7 04/05 (S) Passed {Vote}
- 8 04/09 (S) Transmitted To House
- 9 04/12 (S) Enrolled Bill Signed
- 10 04/12 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** A 031-0007-0103, A 031-0007-0119

----- **Additional Information** -----

**House Committee:** County Affairs

**Senate Committee:** County Affairs

**Principal Author:** Shows

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 998

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Shows

To: County Affairs

### HOUSE BILL NO. 998

AN ACT TO AMEND SECTIONS 31-7-103 AND 31-7-119, MISSISSIPPI CODE OF 1972, TO INCREASE THE MINIMUM ACQUISITION COST OF AN ITEM OR SERVICE PURCHASED BY A COUNTY THAT REQUIRES A REQUISITION TO PURCHASE, PURCHASE ORDER AND RECEIVING REPORT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 31-7-103, Mississippi Code of 1972, is amended as follows:

31-7-103. The purchase clerk shall be responsible as hereinafter provided for the purchase and acquisition of all equipment, heavy equipment, machinery, supplies, commodities, materials and services to be acquired for the county from successful bidders or other vendors, as authorized by law. The central purchase system shall comply with the requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the purchase clerk shall be responsible for the maintenance of such system. No requisition to purchase, purchase order or receiving report shall be required for the purchase of any item or services with an acquisition cost of not more than One Thousand Dollars (\$1,000.00) in the aggregate; however, the invoice for every such purchase shall be signed by the department head or his or her designee, or a receipt signed by the person making the purchase shall be attached to the invoice and forwarded to the purchase clerk. No claim based on any such purchase shall be approved except after compliance with the provisions of this section.

**SECTION 2.** Section 31-7-119, Mississippi Code of 1972, is amended as follows:

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 998

31-7-119. (1) Except as provided in subsection (2) of this section, neither the board of supervisors nor any member thereof shall individually purchase, order or receive any equipment, heavy equipment, machinery, supplies, commodities, materials or services for the use or benefit of the county.

(2) In any county in which the board of supervisors is not required to operate on a countywide system of road administration, the prohibition as provided in subsection (1) of this section shall not apply (a) to purchases of not more than One Thousand Dollars (\$1,000.00) in the aggregate; or (b) to the purchase of parts or repair services in emergency situations, which purchases are exempt from bid requirements pursuant to Section 31-7-13(m)(ii) and (iii), Mississippi Code of 1972. Any supervisor who purchases any item or services in accordance with this subsection (2) shall sign the invoice or receipt and forward it to the purchase clerk in the manner provided by Section 31-7-103. No claim based on any such purchase shall be approved unless the purchase was made in compliance with the provisions of this subsection.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

House Bill 1082

**Description:** Speech-Language Pathologists Master's Degree Loan Forgiveness Program; establish.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Education; Appropriations
- 2 03/01 (H) DR - TSDPCS: ED To AP
- 3 03/06 (H) DR - TSDPCS: AP To ED
- 4 03/06 (H) Title Suff Do Pass Comm Sub
- 5 03/09 (H) Committee Substitute Adopted
- 6 03/09 (H) Passed {Vote}
- 7 03/13 (H) Transmitted To Senate
- 8 03/15 (S) Referred To Universities and Colleges; Appropriations
- 9 03/21 (S) DR - TSDFAA: UC To AP
- 10 04/03 (S) Title Suff Do Pass As Amended
- 11 04/04 (S) Amended
- 12 04/04 (S) Passed As Amended {Vote}
- 13 04/05 (S) Returned For Concurrence
- 14 04/13 (H) Decline to Concur/Invite Conf
- 15 04/17 (H) Motion to Reconsider Entered (Moore, Clarke)
- 16 04/17 (H) Reconsidered
- 17 04/17 (H) Concurred in Amend From Senate {Vote}
- 18 04/19 (H) Enrolled Bill Signed
- 19 04/19 (S) Enrolled Bill Signed
- 20 04/26 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 1082

----- Additional Information -----

**2012 GENERAL LAWS OF MISSISSIPPI, HB 1082**

***House Committee:*** Education, Appropriations

***Senate Committee:*** Universities and Colleges, Appropriations

***Principal Author:*** Mettetal

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1082

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Mettetal

To: Education;  
Appropriations

HOUSE BILL NO. 1082  
(As Sent to Governor)

AN ACT TO CODIFY SECTION 37-143-12, MISSISSIPPI CODE OF 1972, TO ESTABLISH A SPEECH-LANGUAGE PATHOLOGISTS MASTER'S DEGREE LOAN SCHOLARSHIP PROGRAM FOR PERSONS WORKING IN MISSISSIPPI PUBLIC SCHOOLS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 37-143-12, Mississippi Code of 1972:

**37-143-12. Speech-Language Pathologists Loan Forgiveness**

**Program.** (1) There is established a Speech-Language Pathologists Loan Forgiveness Program. It is the intent of the Legislature that persons declaring an intention to work in an accredited public school (K-12) located in the State of Mississippi as a speech-language pathologist shall be eligible for a loan for the purpose of acquiring a master's level education in such profession. The Board of Trustees of State Institutions of Higher Learning shall enter into contracts with applicants, providing that such loans may be discharged by working as a master's level speech-language pathologist in an accredited public school (K-12) located in the State of Mississippi, for a period of time after graduation equal to the period of study provided under the loan. Such contracts shall provide that for each year of service, the appropriate portion of the outstanding balance of principal and interest of such loan shall be converted to interest-free scholarships and discharged.

(2) The Board of Trustees of State Institutions of Higher Learning, with the concurrence of the State Board of Education, shall jointly establish rules and regulations as it deems

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1082

necessary and proper to carry out the purposes and intent of this section.

The provisions of this section shall be subject to specific appropriation therefor by the Legislature.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 1091

**Description:** Ports; exclude the Mississippi State Port Authority from certain procurement laws and regulations.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority


*Effective date:* Passage

**History of Actions:**

- 1 02/20 (H) Referred To Ports, Harbors and Airports
- 2 02/23 (H) Title Suff Do Pass Comm Sub
- 3 02/27 (H) Committee Substitute Adopted
- 4 02/27 (H) Passed {Vote}
- 5 02/27 (H) Motion to Reconsider Entered (Brown (66th), Monsour, Patterson, Broomfield, Williams-Barne
- 6 02/28 (H) Motion to Recnsdr Tabled Lost
- 7 03/01 (H) Motion to Reconsider Tabled
- 8 03/01 (H) Transmitted To Senate
- 9 03/07 (S) Referred To Ports and Marine Resources
- 10 03/29 (S) Title Suff Do Pass As Amended
- 11 04/05 (S) Amended
- 12 04/05 (S) Passed As Amended {Vote}
- 13 04/10 (S) Returned For Concurrence
- 14 04/17 (H) Concurred in Amend From Senate {Vote}
- 15 04/19 (H) Enrolled Bill Signed
- 16 04/19 (S) Enrolled Bill Signed
- 17 04/26 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 1091

**Code Section:** A 027-0104-0007, A 031-0007-0001, A 031-0011-0003, A 059-0005-0001, A 059-



2012 GENERAL LAWS OF MISSISSIPPI, HB 1091

0005-0037

----- Additional Information -----

*House Committee:* Ports, Harbors and Airports

*Senate Committee:* Ports and Marine Resources

*Principal Author:* Smith (39th)

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1091

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Smith (39th)

To: Ports, Harbors and  
Airports

HOUSE BILL NO. 1091  
(As Sent to Governor)

AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO EXEMPT THE MISSISSIPPI STATE PORT AUTHORITY FROM CERTAIN REGULATIONS GOVERNING CONSTRUCTION BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND SECTION 31-7-1, MISSISSIPPI CODE OF 1972, TO EXEMPT THE MISSISSIPPI STATE PORT AUTHORITY FROM CERTAIN PUBLIC PURCHASING REQUIREMENTS; TO AMEND SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO EXEMPT THE MISSISSIPPI STATE PORT AUTHORITY FROM CERTAIN REQUIREMENTS OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; TO AMEND SECTION 59-5-1, MISSISSIPPI CODE OF 1972, TO CONFORM TO REORGANIZATION NOMENCLATURE; TO AMEND SECTION 59-5-37, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is amended as follows:

27-104-7. (1) There is hereby created within the Department of Finance and Administration the Public Procurement Review Board, which shall be composed of the Executive Director of the Department of Finance and Administration, the head of the Office of Budget and Policy Development and an employee of the Office of General Services who is familiar with the purchasing laws of this state. The Executive Director of the Department of Finance and Administration shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Two (2) members shall be a quorum. No action shall be valid unless approved by the chairman and one (1) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. The board shall meet on a monthly basis

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1091

and at any other time when notified by the chairman. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office.

(2) The Public Procurement Review Board shall have the following powers and responsibilities:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities;

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. Provided, however, that the provisions herein shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1091

the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa.

(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race.

(iii) Asian American: having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(iv) American Indian or Alaskan Native: having origins in any of the original peoples of North America.

(v) Female;

(e) In consultation with and approval by the Chairmen of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building. The provisions of this paragraph (e) shall stand repealed on July 1, 2014.

(3) No member of the Public Procurement Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for public construction under this chapter.

(4) This section shall not apply to the Mississippi State Port Authority.

**SECTION 2.** Section 31-7-1, Mississippi Code of 1972, is amended as follows:

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1091

31-7-1. The following terms are defined for the purposes of this chapter to have the following meanings:

(a) "Agency" \* \* \* means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; and except the Mississippi State Port Authority.

(b) "Governing authority" \* \* \* means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, Mississippi State Port Authority, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term "governing authority" shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds.

(c) "Purchasing agent" \* \* \* means any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for



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and make private contract for or purchase for any governing authority or agency.

(d) "Public funds" \* \* \* means and includes any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

(e) "Commodities" \* \* \* means and includes the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale.

(i) "Equipment" shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

(ii) "Furniture" shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

(f) "Emergency" \* \* \* means any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay

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incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

(g) "Construction" \* \* \* means the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

(h) "Purchase" \* \* \* means buying, renting, leasing or otherwise acquiring.

(i) "Certified purchasing office" \* \* \* means any purchasing office wherein fifty percent (50%) or more of the purchasing agents hold a certification from the Universal Public Purchasing Certification Council or other nationally recognized purchasing certification.

**SECTION 3.** Section 31-11-3, Mississippi Code of 1972, is amended as follows:

31-11-3. (1) The Department of Finance and Administration, for the purposes of carrying out the provisions of this chapter, in addition to all other rights and powers granted by law, shall have full power and authority to employ and compensate architects or other employees necessary for the purpose of making inspections, preparing plans and specifications, supervising the erection of any buildings, and making any repairs or additions as may be determined by the Department of Finance and Administration to be necessary, pursuant to the rules and regulations of the State Personnel Board. The department shall have entire control and supervision of, and determine what, if any, buildings, additions, repairs, demolitions or improvements are to be made under the provisions of this chapter, subject to the regulations adopted by the Public Procurement Review Board.

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(2) The department shall have full power to erect buildings, make repairs, additions or improvements, demolitions, to grant or acquire easements or rights-of-way, and to buy materials, supplies and equipment for any of the institutions or departments of the state subject to the regulations adopted by the Public Procurement Review Board. In addition to other powers conferred, the department shall have full power and authority as directed by the Legislature, or when funds have been appropriated for its use for these purposes, to:

(a) Build a state office building;

(b) Build suitable plants or buildings for the use and housing of any state schools or institutions, including the building of plants or buildings for new state schools or institutions, as provided for by the Legislature;

(c) Provide state aid for the construction of school buildings;

(d) Promote and develop the training of returned veterans of the United States in all sorts of educational and vocational learning to be supplied by the proper educational institution of the State of Mississippi, and in so doing allocate monies appropriated to it for these purposes to the Governor for use by him in setting up, maintaining and operating an office and employing a state director of on-the-job training for veterans and the personnel necessary in carrying out Public Law No. 346 of the United States;

(e) Build and equip a hospital and administration building at the Mississippi State Penitentiary;

(f) Build and equip additional buildings and wards at the Boswell Retardation Center;

(g) Construct a sewage disposal and treatment plant at the Mississippi State \* \* \* Hospital, and in so doing acquire additional land as may be necessary, and to exercise the right of eminent domain in the acquisition of this land;

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(h) Build and equip the Mississippi central market and purchase or acquire by eminent domain, if necessary, any lands needed for this purpose;

(i) Build and equip suitable facilities for a training and employing center for the blind;

(j) Build and equip a gymnasium at Columbia Training School;

(k) Approve or disapprove the expenditure of any money appropriated by the Legislature when authorized by the bill making the appropriation;

(l) Expend monies appropriated to it in paying the state's part of the cost of any street paving;

(m) Sell and convey state lands when authorized by the Legislature, cause said lands to be properly surveyed and platted, execute all deeds or other legal instruments, and do any and all other things required to effectively carry out the purpose and intent of the Legislature. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(n) Collect and receive from educational institutions of the State of Mississippi monies required to be paid by these institutions to the state in carrying out any veterans' educational programs;

(o) Purchase lands for building sites, or as additions to building sites, for the erection of buildings and other facilities which the department is authorized to erect, and demolish and dispose of old buildings, when necessary for the proper construction of new buildings. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(p) Obtain business property insurance with a deductible of not less than One Hundred Thousand Dollars



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(\$100,000.00) on state-owned buildings under the management and control of the department; and

(q) In consultation with and approval by the Chairmen of the Public Property Committees of the Senate and the House of Representatives, enter into contracts for the purpose of providing parking spaces for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building. The provisions of this paragraph (q) shall stand repealed on July 1, 2014.

(3) The department shall survey state-owned and state-utilized buildings to establish an estimate of the costs of architectural alterations, pursuant to the Americans With Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The department shall establish priorities for making the identified architectural alterations and shall make known to the Legislative Budget Office and to the Legislature the required cost to effectuate such alterations. To meet the requirements of this section, the department shall use standards of accessibility that are at least as stringent as any applicable federal requirements and may consider:

(a) Federal minimum guidelines and requirements issued by the United States Architectural and Transportation Barriers Compliance Board and standards issued by other federal agencies;

(b) The criteria contained in the American Standard Specifications for Making Buildings Accessible and Usable by the Physically Handicapped and any amendments thereto as approved by the American Standards Association, Incorporated (ANSI Standards);

(c) Design manuals;

(d) Applicable federal guidelines;

(e) Current literature in the field;

(f) Applicable safety standards; and

(g) Any applicable environmental impact statements.



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(4) The department shall observe the provisions of Section 31-5-23, in letting contracts and shall use Mississippi products, including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.

(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution, commission, board or authority regardless of the source of funding used to defray the costs of the construction or renovation project for which services are to be obtained. The provisions of this subsection (7) shall not apply to any architectural or engineering contract paid for by self-generated funds of any of the state institutions of higher learning, nor shall they apply to community college projects that are funded from local funds or other nonstate sources which are outside the Department of Finance and Administration's appropriations or as directed by the Legislature. The provisions of this subsection (7) shall not apply to any construction or design projects of the State Military Department that are funded from federal funds or other nonstate sources.

(8) The department shall have the authority to obtain annually from the state institutions of higher learning information on all building, construction and renovation projects

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including duties, responsibilities and costs of any architect or engineer hired by any such institutions.

(9) As an alternative to other methods of awarding contracts as prescribed by law, the department may elect to use the method of contracting for construction projects set out in Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build method of construction contracting authorized under Section 31-7-13.1 may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project.

(10) The department shall have the authority, for the purposes of carrying out the provisions of this chapter, and in addition to all other rights and powers granted by law, to create and maintain a list of suspended and debarred contractors and subcontractors. Consistent with this authority, the department may adopt regulations governing the suspension or debarment of contractors and subcontractors, which regulations shall be subject to the approval of the Public Procurement Review Board. A suspended or debarred contractor or subcontractor shall be disqualified from consideration for contracts with the department during the suspension or debarment period in accordance with the department's regulations.

(11) This section shall not apply to the Mississippi State Port Authority.

**SECTION 4.** Section 59-5-1, Mississippi Code of 1972, is amended as follows:

59-5-1. This chapter may be cited as the "State Ports and Harbors Law."

As used in this chapter the word "board" shall mean the Mississippi Development Authority.

**SECTION 5.** Section 59-5-37, Mississippi Code of 1972, is amended as follows:

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59-5-37. (1) The board or State Port Authority, in the performance of its duties, may employ such personnel and make all contracts and purchases incidental to or necessary for the advancement, promotion, development, establishment, insurance, maintenance, repair, improvement and operation of any ports, harbors, rivers, channels and waterways including, if required for its protection, retirement benefits, workers' compensation insurance and other employee benefits for the benefit of any employees of the board or State Port Authority. The board or State Port Authority may establish a trade development and promotion account to pay all direct and necessary expenses for the promotion and development of the state port. The authority is granted the power to sue and be sued in its own name.

(2) (a) The board or State Port Authority may, in its discretion, make such contracts or purchases according to the state purchasing laws. Contracts let for any port, harbor, river, channel or waterway improvements shall be advertised as required by law for the letting of public contracts, and such contracts shall be awarded to the lowest and best bidder who shall make bond as shall be required by the board or State Port Authority conditioned for the faithful prosecution and completion of work according to such contracts, such bond to be furnished by a corporate surety company qualified to do business in this state. \* \* \* However, \* \* \* the board may negotiate and enter into contracts with responsible lessees for the construction of facilities by lessees, such as those referred to in Section 59-5-11, and the acquisition thereof by the board upon such terms and conditions and for such amount as may be approved by the board.

(b) The State Port Authority shall be considered to be a "governing authority" under the state public purchasing laws as that term is defined in Section 31-7-1 and used in Sections 31-7-1 through 31-7-73, and shall not be subject to the jurisdiction of

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1091

the Department of Finance and Administration, the Public Procurement Review Board or the Bureau of Building, Grounds and Real Property Management under the provisions of Sections 27-104-7, 29-5-2 and 31-11-3.

(3) (a) The board or State Port Authority, in its discretion, may use the design-build method of contracting for the renovation, repair and/or making of other improvements to not more than one (1) freezer and related equipment and/or facilities at the State Port at Gulfport, Mississippi. For the purposes of this subsection (3), the term "design-build method of contracting" means a contract that combines the design and construction phases of a project into a single contract and the contractor is required to satisfactorily perform, at a minimum, both the design and construction of the project.

(b) This subsection (3) shall stand repealed from and after July 1, 2013.

**SECTION 6.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

House Bill 1235

**Description:** Driver's license; revise use of photograph fees collected by Department of Public Safety.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Transportation
- 2 03/06 (H) Title Suff Do Pass
- 3 03/13 (H) Read the Third Time
- 4 03/15 (H) Passed {Vote}
- 5 03/16 (H) Transmitted To Senate
- 6 03/22 (S) Referred To Accountability, Efficiency, Transparency
- 7 04/02 (S) Title Suff Do Pass As Amended
- 8 04/05 (S) Amended
- 9 04/05 (S) Passed As Amended {Vote}
- 10 04/10 (S) Returned For Concurrence
- 11 04/11 (H) Concurred in Amend From Senate {Vote}
- 12 04/17 (H) Enrolled Bill Signed
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/23 Approved by Governor

**Amendments:**

 [S] Committee Amendment No 1 *Adopted* Voice Vote

 Amendment Report for House Bill No. 1235

**Code Section:** A 063-0001-0043

---- Additional Information ----

**House Committee:** Transportation

**Senate Committee:** Accountability, Efficiency, Transparency



**2012 GENERAL LAWS OF MISSISSIPPI, HB 1235**

*Principal Author:* Arnold

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1235

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Arnold

To: Transportation

HOUSE BILL NO. 1235  
(As Sent to Governor)

AN ACT TO AMEND SECTION 63-1-43, MISSISSIPPI CODE OF 1972, TO REVISE THE USE OF THE DRIVER'S LICENSE PHOTOGRAPH FEES COLLECTED BY THE DEPARTMENT OF PUBLIC SAFETY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 63-1-43, Mississippi Code of 1972, is amended as follows:

63-1-43. (1) The fee for receiving the application and issuing the regular driver's or operator's license and the fee for renewing the license shall be:

(a) Eighteen Dollars (\$18.00) plus the applicable photograph fee for each applicant for a four-year license;

(b) Forty Dollars (\$40.00) plus the applicable photograph fee for each applicant for an eight-year license;

(c) Three Dollars (\$3.00) plus the applicable photograph fee for each applicant for a one-year license, except as provided in paragraph (d) of this subsection; and

(d) Eighteen Dollars (\$18.00) plus the applicable photograph fee for a license for an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government.

All originals and renewals of regular operators' licenses shall be in compliance with Section 63-1-47.

(2) The fee for receiving the application and issuing a motorcycle endorsement shall be Five Dollars (\$5.00) when issued as an endorsement to a four-year license, and Ten Dollars (\$10.00) when issued as an endorsement to an eight-year license.

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Motorcycle endorsements shall be valid for the same period of time as the applicant's operator's license.

(3) The fee for receiving the application and issuing a restricted motorcycle operator's license and the fee for renewing such license shall be:

(a) Eleven Dollars (\$11.00) plus the applicable photograph fee for a four-year license;

(b) Eight Dollars (\$8.00) plus the applicable photograph fee for a one-year license; and

(c) Twenty-two Dollars (\$22.00) plus the applicable photograph fee for an eight-year license.

All originals and renewals of restricted motorcycle licenses shall be valid for the same period of time that an original regular driver's license may be issued to such person in compliance with Section 63-1-47.

(4) From and after January 1, 1990, every person who makes application for an original license or a renewal license to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as such terms are defined in Section 27-19-3, except for those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, shall, in lieu of the regular driver's license above provided for, apply for and obtain a Class D commercial driver's license. Except as otherwise provided in subsection (5) of this section, the fee for the issuance of a Class D commercial driver's license shall be Twenty-three Dollars (\$23.00) plus the applicable photograph fee for a period of four (4) years; however, except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a commercial license regardless of the purpose for which the pickup truck is used.

Except as otherwise provided in subsection (5) of this section, all originals and renewals of commercial licenses issued

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1235

under this section shall be valid for a period of four (4) years, in compliance with Section 63-1-47. Only persons who operate the above-mentioned vehicles in the course of the regular and customary business of the owner shall be required to obtain a Class D commercial operator's license, and persons operating such vehicles for private purposes or in emergencies shall not be required to obtain such license.

(5) The original and each renewal of a commercial driver's license issued under this section to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall be issued for a period of one (1) year for a fee of Eight Dollars (\$8.00) plus the applicable photograph fee and shall expire one (1) year from the date of issuance. Such person may renew a commercial license issued under this section within thirty (30) days of expiration of the license.

(6) The Commissioner of Public Safety, by rule or regulation, shall establish a driver's license photograph fee which shall be the actual cost of the photograph rounded off to the next highest dollar. Monies collected for the photograph fee shall be deposited into a special photograph fee account which the Department of Public Safety shall use to pay the actual cost of producing the photographs. Any monies collected in excess of the actual costs of the photography shall be used by the department to defray the cost of future photography and driver's license technology initiatives.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

**Mississippi Legislature**  
**2012 Regular Session**  
**House Bill 1245**

**Description:** Bonds; reallocate use of certain bond proceeds allocated to Mississippi State University.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (H) Referred To Ways and Means
- 2 03/01 (H) Title Suff Do Pass
- 3 03/12 (H) Passed {Vote}
- 4 03/13 (H) Transmitted To Senate
- 5 03/26 (S) Referred To Finance
- 6 03/29 (S) Title Suff Do Pass
- 7 04/05 (S) Passed {Vote}
- 8 04/09 (S) Transmitted To House
- 9 04/12 (S) Enrolled Bill Signed
- 10 04/12 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**----- Additional Information -----**

**House Committee:** Ways and Means

**Senate Committee:** Finance

**Principal Author:** Smith (39th)



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Smith (39th)

To: Ways and Means

### HOUSE BILL NO. 1245

AN ACT TO AMEND SECTION 1, CHAPTER 480, LAWS OF 2011, TO REVISE THE USE OF CERTAIN BOND PROCEEDS ALLOCATED TO MISSISSIPPI STATE UNIVERSITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 1, Chapter 480, Laws of 2011, is amended as follows:

Section 1. (1) As used in this section, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Accreted value" of any bond means, as of any date of computation, an amount equal to the sum of (i) the stated initial value of such bond, plus (ii) the interest accrued thereon from the issue date to the date of computation at the rate, compounded semiannually, that is necessary to produce the approximate yield to maturity shown for bonds of the same maturity.

(b) "State" means the State of Mississippi.

(c) "Commission" means the State Bond Commission.

(2) (a) (i) A special fund, to be designated as the "2011 IHL and State Agencies Capital Improvements Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund.

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(ii) Monies deposited into the fund shall be disbursed, in the discretion of the Department of Finance and Administration, with the approval of the Board of Trustees of State Institutions of Higher Learning on those projects related to the universities under its management and control to pay the costs of capital improvements, renovation and/or repair of existing facilities, furnishings and/or equipping facilities for public facilities as hereinafter described:

NAME	PROJECT	AMOUNT ALLOCATED
<b>INSTITUTIONS OF HIGHER LEARNING.....</b>		<b>\$ 98,900,000.00</b>
Alcorn State University.....	Repair, renovation, replacement and improvement of campus infrastructure and facilities and upgrade, expansion and improvement of campus security infrastructure .....	\$ 9,200,000.00      \$ 8,700,000.00
	Repair and renovation of the athletic pool at the Davey Whitney Health Education and Physical Education Complex and associated facility repairs .....	     \$ 500,000.00
Delta State University.....	Phase III of repair, renovation, expansion, furnishing and equipping of Caylor-White/ Walters Hall and repair and renovation of campus buildings, facilities, infrastructure and continuation/completion of previously authorized	\$ 10,850,000.00

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projects including a fire  
station ..... \$10,500,000.00

Construction, furnishing and  
equipping of restroom and  
concession facilities on the  
visitor's side of the  
football stadium ..... \$ 350,000.00

Jackson State University.....\$ 11,300,000.00

Repair and renovation of  
Alexander Center ..... \$ 6,500,000.00

Repair and renovation of campus  
buildings, facilities,  
infrastructure and  
continuation/completion  
of previously authorized  
projects ..... \$ 3,000,000.00

Preplanning of the repair,  
renovation and expansion of  
Joseph H. Jackson College of  
Education and Human  
Development ..... \$ 350,000.00

Completion of repair and renovation,  
furnishing and equipping of the  
101 Capitol Centre property  
located at 101 West Capitol  
Street in the City of Jackson,  
Mississippi ..... \$ 1,250,000.00

Repair and renovation of the  
president's home ..... \$ 200,000.00

Mississippi University for Women.....\$ 5,250,000.00

Phase I of the repair,  
renovation, expansion,  
furnishing and equipping

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of Fant Library ..... \$ 5,000,000.00

Preplanning of the repair  
and renovation of  
Shattuck Hall ..... \$ 250,000.00

Mississippi State University.....\$ 15,200,000.00

Repair, renovation, furnishing  
and equipping of Lee Hall, construction,  
furnishing and equipping of a  
new classroom building  
and repair, renovation and  
improvement of campus  
buildings, facilities,  
infrastructure and  
continuation/completion  
of previously authorized  
projects ..... \$15,200,000.00

Mississippi State University/Division of  
Agriculture, Forestry and Veterinary Medicine....\$ 1,000,000.00

\* \* \* Repair, renovation,  
expansion, furnishing and  
equipping of the Wise  
Center ..... \$ 600,000.00

Preplanning of new abattoir  
facility, Phase I of the  
Animal Life Sciences  
Initiative ..... \$ 200,000.00

Repair and renovation of campus  
buildings, facilities,  
infrastructure and  
continuation/completion  
of previously authorized  
projects ..... \$ 200,000.00

Mississippi Valley State University.....\$ 9,200,000.00

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Repair, renovation, expansion,  
furnishing and equipping  
of the R.W. Harrison  
Complex ..... \$ 5,000,000.00

Matching funds for the tie-in  
of campus to City of  
Greenwood sewer system ..... \$ 4,000,000.00

Repair and renovation of campus  
buildings, facilities,  
infrastructure and  
continuation/completion  
of previously authorized  
projects ..... \$ 200,000.00

University of Mississippi.....\$ 15,200,000.00

Repair, renovation, expansion,  
furnishing and equipping  
of buildings, facilities and  
infrastructure ..... \$15,200,000.00

University of Mississippi Medical Center.....\$ 4,500,000.00

Planning, design and Phase I  
of construction, furnishing  
and equipping of a new  
School of Medicine  
classroom building ..... \$ 4,500,000.00

University of Southern Mississippi.....\$ 15,200,000.00

Phase II of construction,  
furnishing and equipping of  
a building to house the  
College of Business and  
repair and renovation  
of campus buildings,  
facilities, infrastructure  
and continuation/completion



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of previously authorized  
projects ..... \$15,200,000.00

University of Southern Mississippi/  
Gulf Coast Campuses.....\$ 1,500,000.00

Repair and renovation of campus  
buildings and facilities, and  
repair, renovation, replacement  
and improvement of campus  
infrastructure ..... \$ 1,500,000.00

IHL Education and Research Center.....\$ 500,000.00

Repair and renovation of campus  
buildings and facilities, and  
repair, renovation, replacement  
and improvement of campus  
infrastructure ..... \$ 500,000.00

**STATE AGENCIES.....\$ 82,775,000.00**

Department of Finance and Administration.....\$ 21,500,000.00

Costs associated with the  
implementation of MAGIC  
(Mississippi's Accountability  
System for Government Information  
and Collaboration, the state's  
Enterprise Resource  
Planning System) ..... \$19,000,000.00

Repair and renovation of the  
Robert G. Clark Building property  
located at 301 Lamar Street in  
the City of Jackson,  
Mississippi ..... \$ 2,500,000.00

Department of Wildlife, Fisheries and Parks.....\$ 6,500,000.00

Renovation and  
improvement of dams and  
spillways at

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

state-owned lakes ..... \$ 2,500,000.00

Phase I of comprehensive  
repair and renovation and  
construction of improvements,  
furnishing and equipping,  
upgrades and additions to  
buildings, facilities and  
infrastructure at state parks  
as determined necessary  
by the Department of Wildlife,  
Fisheries and Parks ..... \$ 3,000,000.00

Phase I of repair and renovation of  
facilities, purchase of equipment,  
renovation of buildings, facilities,  
and improvement of access for  
the disabled as determined  
necessary by the Department of  
Wildlife, Fisheries and Parks  
for visitor services and the Center  
for Conservation and Biodiversity  
at the Mississippi Museum of  
Natural Science ..... \$ 1,000,000.00

Department of Mental Health.....\$ 5,000,000.00

Repair and renovation to buildings,  
facilities and infrastructure at  
Mental Health facilities as  
determined necessary by the  
Department of Mental  
Health ..... \$ 5,000,000.00

Department of Public Safety.....\$ 18,000,000.00

Phase III of construction, furnishing  
and equipping of a central office  
of the Mississippi Crime

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Laboratory and the State  
Medical Examiner in Rankin  
County, Mississippi ..... \$10,000,000.00

Phase I of preplanning, construction,  
furnishing and equipping of a  
headquarters building adjacent  
to the central office of the  
Mississippi Crime Laboratory  
and the State Medical Examiner  
in Rankin County,  
Mississippi ..... \$ 3,000,000.00

Construction, furnishing and equipping  
of a Highway Safety Patrol  
substation in the Greenwood  
District ..... \$ 5,000,000.00

Department of Information Technology Services.....\$ 4,500,000.00

Funding for information technology  
projects to include increasing  
cooling capacity and redundancy  
of critical systems at the State  
Data Center, addition and  
implementation of equipment to  
support mission critical  
systems for state agencies in  
the State Data Center, and  
projects to implement additional  
IT consolidation and  
efficiencies ..... \$ 4,500,000.00

Department of Revenue.....\$ 21,975,000.00

Additions, upgrades and  
improvements to department  
information technology  
systems ..... \$18,675,000.00

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

Repair, renovation, maintenance,  
upgrading and modernization  
of Alcoholic Beverage Control  
Division warehouse and related  
equipment and facilities in  
Gluckstadt, Mississippi ..... \$ 300,000.00

Planning, design and Phase I  
of construction, furnishing  
and equipping of a new  
headquarters building for the  
department to be located on  
state-owned property in the City  
of Jackson, Mississippi, at a site  
selected by the Department of Finance  
and Administration by not later  
than October 1, 2011 ..... \$ 3,000,000.00

Mississippi Authority for Educational Television...\$ 400,000.00

Repair, renovation, replacement  
and improvement of  
systems, equipment and  
facilities ..... \$ 400,000.00

State Fire Academy.....\$ 400,000.00

Completion of construction,  
furnishing and equipping of  
new classrooms, the fire  
research building and related  
facilities at the State Fire  
Academy in Rankin County,  
Mississippi ..... \$ 400,000.00

Office of the Governor, Division of Medicaid.....\$ 4,500,000.00

Funding for procuring and  
implementing the Mississippi  
Medicaid Management Information

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

System and related system

projects ..... \$ 4,500,000.00

**TOTAL.....\$181,675,000.00**

(b) (i) Amounts deposited into such special fund shall be disbursed to pay the costs of projects described in paragraph (a) of this subsection. If any monies in such special fund are not used within four (4) years after the date the proceeds of the bonds authorized under this section are deposited into the special fund, then the agency or institution of higher learning for which any unused monies are allocated under paragraph (a) of this subsection shall provide an accounting of such unused monies to the commission. Promptly after the commission has certified, by resolution duly adopted, that the projects described in paragraph (a) of this subsection shall have been completed, abandoned, or cannot be completed in a timely fashion, any amounts remaining in such special fund shall be applied to pay debt service on the bonds issued under this section, in accordance with the proceedings authorizing the issuance of such bonds and as directed by the commission.

(ii) Monies in the special fund may be used to reimburse reasonable actual and necessary costs incurred by the Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, in administering or providing assistance directly related to a project described in paragraph (a) of this subsection. An accounting of actual costs incurred for which reimbursement is sought shall be maintained for each project by the Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management. Reimbursement of reasonable actual and necessary costs for a project shall not exceed two percent (2%) of the proceeds of bonds issued for such project. Monies authorized for a particular project may not be used to reimburse administrative costs for unrelated projects.



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(c) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, is expressly authorized and empowered to receive and expend any local or other source funds in connection with the expenditure of funds provided for in this subsection. The expenditure of monies deposited into the special fund shall be under the direction of the Department of Finance and Administration, and such funds shall be paid by the State Treasurer upon warrants issued by such department, which warrants shall be issued upon requisitions signed by the Executive Director of the Department of Finance and Administration, or his designee.

(d) Any amounts allocated to an agency that are in excess of that needed to complete the projects at such agency that are described in paragraph (a) of this subsection may be used for general repairs and renovations at the agency.

(3) (a) (i) A special fund, to be designated as the "2011 Bureau of Building State-Owned Buildings Discretionary Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund.

(ii) Monies deposited into the fund shall be disbursed, in the discretion of the Department of Finance and Administration, to pay the costs of site and infrastructure improvements, general repairs and renovations, weatherization, demolition and roofing, environmental, mechanical, electrical and structural repairs required for state-owned facilities and community and junior colleges, repair and renovation of state-owned facilities and community and junior colleges necessary for compliance with the Americans with Disabilities Act, purchase and installation of necessary furniture and equipment,

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

continuation and completion of previously authorized projects and payment of lease-purchase agreements; however, of the monies authorized to be deposited into the fund, not less than Two Million Dollars (\$2,000,000.00) shall be allocated for such purposes at state parks.

(b) Amounts deposited into such special fund shall be disbursed to pay the costs of the projects described in paragraph (a) of this subsection. Promptly after the commission has certified, by resolution duly adopted, that the projects described in paragraph (a) of this subsection shall have been completed, abandoned, or cannot be completed in a timely fashion, any amounts remaining in such special fund shall be applied to pay debt service on the bonds issued under this section, in accordance with the proceedings authorizing the issuance of such bonds and as directed by the commission.

(c) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, is expressly authorized and empowered to receive and expend any local or other source funds in connection with the expenditure of funds provided for in this subsection. The expenditure of monies deposited into the special fund shall be under the direction of the Department of Finance and Administration, and such funds shall be paid by the State Treasurer upon warrants issued by such department, which warrants shall be issued upon requisitions signed by the Executive Director of the Department of Finance and Administration, or his designee.

(4) (a) (i) A special fund, to be designated as the "2011 Bureau of Building IHL Discretionary Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund.

(ii) Monies deposited into the fund shall be disbursed, in the discretion of the Department of Finance and Administration, to pay the costs of site and infrastructure improvements, general repairs and renovations, weatherization, demolition and roofing, environmental, mechanical, electrical and structural repairs required for facilities at state institutions of higher learning, repair and renovation of facilities and state institutions of higher learning necessary for compliance with the Americans with Disabilities Act, purchase and installation of necessary furniture and equipment, continuation and completion of previously authorized projects and payment of lease-purchase agreements.

(b) Amounts deposited into such special fund shall be disbursed to pay the costs of the projects described in paragraph (a) of this subsection. Promptly after the commission has certified, by resolution duly adopted, that the projects described in paragraph (a) of this subsection shall have been completed, abandoned, or cannot be completed in a timely fashion, any amounts remaining in such special fund shall be applied to pay debt service on the bonds issued under this section, in accordance with the proceedings authorizing the issuance of such bonds, and as directed by the commission.

(c) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, is expressly authorized and empowered to receive and expend any local or other source funds in connection with the expenditure of funds provided for in this subsection. The expenditure of monies deposited into the special fund shall be under the direction of the Department of Finance and Administration, and such funds shall be paid by the State Treasurer upon warrants issued by such department, which warrants

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

shall be issued upon requisitions signed by the Executive Director of the Department of Finance and Administration, or his designee.

(5) (a) (i) A special fund, to be designated as the "2011 Bureau of Building State-Owned Buildings Energy Discretionary Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund.

(ii) Monies deposited into the fund shall be disbursed, in the discretion of the Department of Finance and Administration, to pay the costs of improvements designed to conserve or assist in the conservation of energy at state-owned facilities and community and junior colleges.

(b) Amounts deposited into such special fund shall be disbursed to pay the costs of the projects described in paragraph (a) of this subsection. Promptly after the commission has certified, by resolution duly adopted, that the projects described in paragraph (a) of this subsection shall have been completed, abandoned, or cannot be completed in a timely fashion, any amounts remaining in such special fund shall be applied to pay debt service on the bonds issued under this section, in accordance with the proceedings authorizing the issuance of such bonds and as directed by the commission.

(c) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, is expressly authorized and empowered to receive and expend any local or other source funds in connection with the expenditure of funds provided for in this subsection. The expenditure of monies deposited into the special fund shall be under the direction of the Department of Finance and



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

Administration, and such funds shall be paid by the State Treasurer upon warrants issued by such department, which warrants shall be issued upon requisitions signed by the Executive Director of the Department of Finance and Administration, or his designee.

(6) (a) (i) A special fund, to be designated as the "2011 Community and Junior Colleges Capital Improvements Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund may not be used or expended for any purpose except as authorized under this act.

(ii) The money deposited into the fund shall be disbursed, in the discretion of the Department of Finance and Administration, to pay the costs of acquisition of real property, construction of new facilities, equipping and furnishing facilities, including furniture and technology equipment and infrastructure, and addition to or renovation of existing facilities for community and junior college campuses as recommended by the State Board for Community and Junior Colleges. The amount to be expended at each community and junior college is as follows:

Coahoma.....	\$ 1,161,038.00
Copiah-Lincoln.....	1,409,928.00
East Central.....	1,256,205.00
East Mississippi.....	1,592,828.00
Hinds.....	2,675,950.00
Holmes.....	1,774,035.00
Itawamba.....	2,131,224.00
Jones.....	1,710,238.00
Meridian.....	1,413,330.00



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Mississippi Delta.....	1,371,066.00
Mississippi Gulf Coast.....	2,332,951.00
Northeast Mississippi.....	1,404,571.00
Northwest Mississippi.....	2,059,183.00
Pearl River.....	1,562,578.00
Southwest Mississippi.....	1,144,875.00
<b>GRAND TOTAL.....</b>	<b>\$25,000,000.00</b>

(b) Amounts deposited into such special fund shall be disbursed to pay the costs of projects described in paragraph (a) of this subsection. If any monies in such special fund are not used within four (4) years after the date the proceeds of the bonds authorized under this section are deposited into the special fund, then the community college or junior college for which any such monies are allocated under paragraph (a) of this subsection shall provide an accounting of such unused monies to the commission. Promptly after the commission has certified, by resolution duly adopted, that the projects described in paragraph (a) of this section shall have been completed, abandoned, or cannot be completed in a timely fashion, any amounts remaining in such special fund shall be applied to pay debt service on the bonds issued under this section, in accordance with the proceedings authorizing the issuance of such bonds and as directed by the commission.

(c) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, is expressly authorized and empowered to receive and expend any local or other source funds in connection with the expenditure of funds provided for in this section. The expenditure of monies deposited into the special fund shall be under the direction of the Department of Finance and Administration, and such funds shall be paid by the State Treasurer upon warrants issued by such department, which warrants

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shall be issued upon requisitions signed by the Executive Director of the Department of Finance and Administration, or his designee.

(7) (a) The commission, at one time, or from time to time, may declare by resolution the necessity for issuance of general obligation bonds of the State of Mississippi to provide funds for all costs incurred or to be incurred for the purposes described in subsections (2), (3), (4), (5) and (6) of this section. Upon the adoption of a resolution by the Department of Finance and Administration, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this section, the Department of Finance and Administration shall deliver a certified copy of its resolution or resolutions to the commission. Upon receipt of such resolution, the commission, in its discretion, may act as issuing agent, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The total amount of bonds issued under this section shall not exceed Two Hundred Thirty Million One Hundred Seventy-five Thousand Dollars (\$230,175,000.00). No bonds shall be issued under this section after July 1, 2015.

(b) The proceeds of the bonds issued pursuant to this act shall be deposited into the following special funds in not more than the following amounts:

(i) The 2011 IHL and State Agencies Capital Improvements Fund created pursuant to subsection (2) of this section.....\$181,675,000.00.

(ii) The 2011 Bureau of Building State-Owned Buildings Discretionary Fund created pursuant to subsection (3) of this section.....\$ 15,500,000.00.

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(iii) The 2011 Bureau of Building IHL Discretionary Fund created pursuant to subsection (4) of this section.....\$ 4,000,000.00.

(iv) The 2011 Bureau of Building State-Owned Buildings Energy Discretionary Fund created pursuant to subsection (5) of this section.....\$ 4,000,000.00.

(v) The 2011 Community and Junior Colleges Capital Improvements Fund created pursuant to subsection (6) of this section.....\$ 25,000,000.00.

(c) Any investment earnings on amounts deposited into the special funds created in subsections (2), (3), (4), (5) and (6) of this section shall be used to pay debt service on bonds issued under this section, in accordance with the proceedings authorizing issuance of such bonds.

(8) The principal of and interest on the bonds authorized under this section shall be payable in the manner provided in this subsection. Such bonds shall bear such date or dates, be in such denomination or denominations, bear interest at such rate or rates (not to exceed the limits set forth in Section 75-17-101, Mississippi Code of 1972), be payable at such place or places within or without the State of Mississippi, shall mature absolutely at such time or times not to exceed twenty-five (25) years from date of issue, be redeemable before maturity at such time or times and upon such terms, with or without premium, shall bear such registration privileges, and shall be substantially in such form, all as shall be determined by resolution of the commission.

(9) The bonds authorized by this section shall be signed by the chairman of the commission, or by his facsimile signature, and the official seal of the commission shall be affixed thereto, attested by the secretary of the commission. The interest coupons, if any, to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

bonds shall have been signed by the officials designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers before the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until their delivery to the purchaser, or had been in office on the date such bonds may bear. However, notwithstanding anything herein to the contrary, such bonds may be issued as provided in the Registered Bond Act of the State of Mississippi.

(10) All bonds and interest coupons issued under the provisions of this section have all the qualities and incidents of negotiable instruments under the provisions of the Uniform Commercial Code, and in exercising the powers granted by this section, the commission shall not be required to and need not comply with the provisions of the Uniform Commercial Code.

(11) The commission shall act as issuing agent for the bonds authorized under this section, prescribe the form of the bonds, determine the appropriate method for sale of the bonds, advertise for and accept bids or negotiate the sale of the bonds, issue and sell the bonds, pay all fees and costs incurred in such issuance and sale, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The commission is authorized and empowered to pay the costs that are incident to the sale, issuance and delivery of the bonds authorized under this section from the proceeds derived from the sale of such bonds. The commission may sell such bonds on sealed bids at public sale or may negotiate the sale of the bonds for such price as it may determine to be for the best interest of the State of Mississippi. All interest accruing on such bonds so issued shall be payable semiannually or annually.



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1245

If such bonds are sold by sealed bids at public sale, notice of the sale shall be published at least one time, not less than ten (10) days before the date of sale, and shall be so published in one or more newspapers published or having a general circulation in the City of Jackson, Mississippi, selected by the commission.

The commission, when issuing any bonds under the authority of this section, may provide that bonds, at the option of the State of Mississippi, may be called in for payment and redemption at the call price named therein and accrued interest on such date or dates named therein.

(12) The bonds issued under the provisions of this section are general obligations of the State of Mississippi, and for the payment thereof the full faith and credit of the State of Mississippi is irrevocably pledged. If the funds appropriated by the Legislature are insufficient to pay the principal of and the interest on such bonds as they become due, then the deficiency shall be paid by the State Treasurer from any funds in the State Treasury not otherwise appropriated. All such bonds shall contain recitals on their faces substantially covering the provisions of this subsection.

(13) Upon the issuance and sale of bonds under the provisions of this section, the commission shall transfer the proceeds of any such sale or sales to the special funds created in subsections (2), (3), (4), (5) and (6) of this section in the amounts provided for in subsection (7)(b) of this section. The proceeds of such bonds shall be disbursed solely upon the order of the Department of Finance and Administration under such restrictions, if any, as may be contained in the resolution providing for the issuance of the bonds.

(14) The bonds authorized under this section may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and



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things which are specified or required by this section. Any resolution providing for the issuance of bonds under the provisions of this section shall become effective immediately upon its adoption by the commission, and any such resolution may be adopted at any regular or special meeting of the commission by a majority of its members.

(15) The bonds authorized under the authority of this section may be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, in the manner and with the force and effect provided by Chapter 13, Title 31, Mississippi Code of 1972, for the validation of county, municipal, school district and other bonds. The notice to taxpayers required by such statutes shall be published in a newspaper published or having a general circulation in the City of Jackson, Mississippi.

(16) Any holder of bonds issued under the provisions of this section or of any of the interest coupons pertaining thereto may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights granted under this section, or under such resolution, and may enforce and compel performance of all duties required by this section to be performed, in order to provide for the payment of bonds and interest thereon.

(17) All bonds issued under the provisions of this section shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi, and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

(18) Bonds issued under the provisions of this section and income therefrom shall be exempt from all taxation in the State of Mississippi.

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(19) The proceeds of the bonds issued under this section shall be used solely for the purposes herein provided, including the costs incident to the issuance and sale of such bonds.

(20) The State Treasurer is authorized, without further process of law, to certify to the Department of Finance and Administration the necessity for warrants, and the Department of Finance and Administration is authorized and directed to issue such warrants, in such amounts as may be necessary to pay when due the principal of, premium, if any, and interest on, or the accreted value of, all bonds issued under this section; and the State Treasurer shall forward the necessary amount to the designated place or places of payment of such bonds in ample time to discharge such bonds, or the interest thereon, on the due dates thereof.

(21) This section shall be deemed to be full and complete authority for the exercise of the powers herein granted, but this section shall not be deemed to repeal or to be in derogation of any existing law of this state.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

House Bill 1257

**Description:** Qualified equity investment tax credit; revise certain provisions regarding.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Ways and Means
- 2 02/29 (H) Title Suff Do Pass
- 3 03/12 (H) Read the Third Time
- 4 03/13 (H) Amended
- 5 03/13 (H) Passed As Amended (Vote)
- 6 03/15 (H) Transmitted To Senate
- 7 03/20 (S) Referred To Finance
- 8 04/03 (S) Title Suff Do Pass
- 9 04/05 (S) Passed (Vote)
- 10 04/09 (S) Transmitted To House
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/12 (H) Enrolled Bill Signed
- 13 04/19 Approved by Governor

**Amendments:**

 [H] Amendment No 1 **Adopted** Voice Vote

**Code Section:** A 057-0105-0001, A 031-0007-0013

---- Additional Information ----

**House Committee:** Ways and Means

**Senate Committee:** Finance

**Principal Author:** Smith (39th)

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1257

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Smith (39th)

To: Ways and Means

### HOUSE BILL NO. 1257 (As Passed the House)

AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972, TO REVISE THE TIME WITHIN WHICH A QUALIFIED COMMUNITY DEVELOPMENT ENTITY ALLOCATED A QUALIFIED EQUITY INVESTMENT TAX CREDIT MUST ISSUE THE QUALIFIED EQUITY INVESTMENT FOR WHICH THE CREDIT WAS ALLOCATED; TO DEFINE THE TERMS "NEW MARKETS TAX CREDIT TRANSACTION," "PUBLIC BENEFIT CORPORATION," "PUBLIC ENTITY OR PUBLIC ENTITIES" AND "PUBLIC PROPERTY OR FACILITIES"; TO AUTHORIZE PUBLIC ENTITIES TO CREATE PUBLIC BENEFIT CORPORATIONS FOR THE PURPOSE OF ENTERING INTO FINANCING AGREEMENTS AND ENGAGING IN NEW MARKETS TAX CREDIT TRANSACTIONS; TO AUTHORIZE PUBLIC ENTITIES TO ENTER INTO FINANCING ARRANGEMENTS IN ORDER TO TRANSFER PUBLIC PROPERTY OR FACILITIES TO OR FROM PUBLIC BENEFIT CORPORATIONS; TO AUTHORIZE PUBLIC ENTITIES AND PUBLIC BENEFIT CORPORATIONS, WITH RESPECT TO NEW MARKETS TAX CREDIT TRANSACTIONS, TO ENTER INTO FINANCING ARRANGEMENTS WITH GOVERNMENTAL, NONPROFIT OR FOR PROFIT ENTITIES IN ORDER TO LEVERAGE FUNDS NOT OTHERWISE AVAILABLE TO PUBLIC ENTITIES FOR THE ACQUISITION, CONSTRUCTION OR RENOVATION OF PROPERTIES TRANSFERRED TO A PUBLIC BENEFIT CORPORATION; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 57-105-1, Mississippi Code of 1972, is amended as follows:

57-105-1. (1) As used in this section:

(a) "Adjusted purchase price" means the investment in the qualified community development entity for the qualified equity investment, substantially all of the proceeds of which are used to make qualified low-income community investments in Mississippi.

For the purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment will be considered held by a qualified community development entity even if the investment has been sold or repaid; provided that the qualified community

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development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment in Mississippi, including any federal Indian reservation located within the geographical boundary of Mississippi within twelve (12) months of the receipt of such capital. A qualified community development entity will not be required to reinvest capital returned from the qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment will be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(b) "Applicable percentage" means:

(i) For any equity investment issued prior to July 1, 2008, four percent (4%) for each of the second through seventh credit allowance dates for purposes of the taxes imposed by Section 27-7-5 and one and one-third percent (1-1/3%) for each of the second through seventh credit allowance dates for purposes of the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

(ii) For any equity investment issued from and after July 1, 2008, eight percent (8%) for each of the first through third credit allowance dates for purposes of the taxes imposed by Section 27-7-5 or the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

(c) "Credit allowance date" means, with respect to any qualified equity investment:

(i) The date upon which the investment is initially made; and



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(ii) 1. For equity investments issued prior to July 1, 2008, each of the subsequent six (6) anniversary dates of the date upon which the investment is initially made; or

2. For equity investments issued from and after July 1, 2008, each of the subsequent two (2) anniversary dates of the date upon which the investment is initially made.

(d) "Qualified community development entity" shall have the meaning ascribed to such term in Section 45D of the Internal Revenue Code of 1986, as amended, if the entity has entered into an Allocation Agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended.

(e) "Qualified active low-income community business" shall have the meaning ascribed to such term in Section 45D of the Internal Revenue Code of 1986, as amended.

(f) "Qualified equity investment" shall have the meaning ascribed to such term in Section 45D of the Internal Revenue Code of 1986, as amended. The investment does not have to be designated as a qualified equity investment by the Community Development Financial Institutions Fund of the United States Treasury to be considered a qualified equity investment under this section but otherwise must meet the definition under the Internal Revenue Code. In addition to meeting the definition in Section 45D of the Internal Revenue Code such investment must also:

(i) Have been acquired after January 1, 2007, at its original issuance solely in exchange for cash; and

(ii) Have been allocated by the Mississippi Development Authority.

(g) "Qualified low-income community investment" shall have the meaning ascribed to such term in Section 45D of the Internal Revenue Code of 1986, as amended; provided, however, that the maximum amount of qualified low-income community investments

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issued for a single qualified active low-income community business, on an aggregate basis with all of its affiliates, that may be included for purposes of allocating any credits under this section shall not exceed Ten Million Dollars (\$10,000,000.00), in the aggregate, whether issued by one (1) or several qualified community development entities.

(2) A taxpayer that holds a qualified equity investment on the credit allowance date of the qualified equity investment shall be entitled to a credit applicable against the taxes imposed by Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123 during the taxable year that includes the credit allowance date. The amount of the credit shall be equal to the applicable percentage of the adjusted purchase price paid to the qualified community development entity for the qualified equity investment. The amount of the credit that may be utilized in any one (1) tax year shall be limited to an amount not greater than the total tax liability of the taxpayer for the taxes imposed by the above-referenced sections. The credit shall not be refundable or transferable. Any unused portion of the credit may be carried forward for seven (7) taxable years beyond the credit allowance date on which the credit was earned. The maximum aggregate amount of qualified equity investments that may be allocated by the Mississippi Development Authority may not exceed an amount that would result in taxpayers claiming in any one (1) state fiscal year credits in excess of Fifteen Million Dollars (\$15,000,000.00), exclusive of credits that might be carried forward from previous taxable years; however, a maximum of one-third (1/3) of this amount may be allocated as credits for taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123. Any taxpayer claiming a credit under this section against the taxes imposed by Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123 shall not be required to pay any additional tax under Section 27-15-123 as a result of claiming such credit. The Mississippi

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1257

Development Authority shall allocate credits within this limit as provided for in subsection (4) of this section.

(3) Tax credits authorized by this section that are earned by a partnership, limited liability company, S corporation or other similar pass-through entity, shall be allocated among all partners, members or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners, members or shareholders mutually agree as provided in an executed document. Such allocation shall be made each taxable year of such pass-through entity which contains a credit allowance date.

(4) The qualified community development entity shall apply for credits with the Mississippi Development Authority on forms prescribed by the Mississippi Development Authority. The qualified community development entity must pay an application fee of One Thousand Dollars (\$1,000.00) to the Mississippi Development Authority at the time the application is submitted. In the application the qualified community development entity shall certify to the Mississippi Development Authority the anticipated dollar amount of the qualified equity investments to be made in this state, including in any federal Indian reservation located within the state's geographical boundary, during the first twelve-month period following the initial credit allowance date. The Mississippi Development Authority shall allocate credits based on the anticipated dollar amount of qualified equity investments as certified in the application. Once the Mississippi Development Authority has allocated credits to a qualified community development entity, such entity shall have sixty (60) days from the date of such allocation to issue the corresponding qualified equity investments. If the qualified equity investment is not issued within such time period, the allocation shall be cancelled and returned to the Mississippi Development Authority for reallocation. Upon final documentation of the qualified

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low-income community investments, if the actual dollar amount of the investments is lower than the amount estimated, the Mississippi Development Authority shall adjust the tax credit allowed under this section. The Department of Revenue may recapture all of the credit allowed under this section if:

(a) Any amount of federal tax credits available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under Section 45D of the Internal Revenue Code of 1986, as amended; or

(b) The qualified community development entity redeems or makes any principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of the qualified equity investment; or

(c) The qualified community development entity fails to maintain at least eighty-five percent (85%) of the proceeds of the qualified equity investment in qualified low-income community investments in Mississippi at any time prior to the seventh anniversary of the issuance of the qualified equity investment.

Any credits that are subject to recapture under this subsection shall be recaptured from the taxpayer that actually claimed the credit.

The Mississippi Development Authority shall not allocate any credits under this section after January 1, 2014.

(5) Each qualified community development entity that receives qualified equity investments to make qualified low-income community investments in Mississippi must annually report to the Mississippi Development Authority the North American Industry Classification System Code, the county, the dollars invested, the number of jobs assisted and the number of jobs assisted with wages over one hundred percent (100%) of the federal poverty level for a family of four (4) of each qualified low-income community investment.



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(6) The Mississippi Development Authority shall file an annual report on all qualified low-income community investments with the Governor, the Clerk of the House of Representatives, the Secretary of the Senate and the Secretary of State describing the North American Industry Classification System Code, the county, the dollars invested, the number of jobs assisted and the number of jobs assisted with wages over one hundred percent (100%) of the federal poverty level for a family of four (4) of each qualified low-income community investment. The annual report will be posted on the Mississippi Development Authority's Internet website.

(7) (a) The purpose of this subsection is to authorize the creation and establishment of public benefit corporations for financing arrangements regarding public property and facilities.

(b) As used in this subsection:

(i) "New Markets Tax Credit transaction" means any financing transaction which utilizes either this section or Section 45D of the Internal Revenue Code of 1986, as amended.

(ii) "Public benefit corporation" means a nonprofit corporation formed or designated by a public entity to carry out the purposes of this subsection.

(iii) "Public entity or public entities" includes utility districts, regional solid waste authorities, regional utility authorities, community hospitals, regional airport authorities, community and junior colleges, educational building corporations established by or on behalf of the state institutions of higher learning, school districts, planning and development districts, county economic development districts, urban renewal agencies, any other regional or local economic development authority, agency or governmental entity, and any other regional or local industrial development authority, agency or governmental entity.



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(iv) "Public property or facilities" means any property or facilities owned or leased by a public entity or public benefit corporation.

(b) Notwithstanding any other provision of law to the contrary, public entities are authorized pursuant to this subsection to create one or more public benefit corporations or designate an existing corporation as a public benefit corporation for the purpose of entering into financing agreements and engaging in New Markets Tax Credit transactions, which shall include, without limitation, arrangements to plan, acquire, renovate, construct, lease, sublease, manage, operate and/or improve new or existing public property or facilities located within the boundaries or service area of the public entity. Any financing arrangement authorized under this subsection shall further any purpose of the public entity and may include a term of up to fifty (50) years.

(d) Notwithstanding any other provision of law to the contrary and in order to facilitate the acquisition, renovation, construction, leasing, subleasing, management, operating and/or improvement of new or existing public property or facilities to further any purpose of a public entity, public entities are authorized to enter into financing arrangements in order to transfer public property or facilities to and/or from public benefit corporations, including, without limitation, sales, sale-leasebacks, leases and lease-leasebacks, provided such transfer is related to any New Markets Tax Credit transaction furthering any purpose of the public entity. Any such transfer under this paragraph (d) and the public property or facilities transferred in connection therewith shall be exempted from any limitation or requirements with respect to leasing, acquiring, and/or constructing public property or facilities.

(e) With respect to a New Markets Tax Credit transaction, public entities and public benefit corporations are

authorized to enter into financing arrangements with any governmental, nonprofit or for-profit entity in order to leverage funds not otherwise available to public entities for the acquisition, construction and/or renovation of properties transferred to such public benefit corporations. The use of any funds loaned by or contributed by a public benefit corporation or borrowed by or otherwise made available to a public benefit corporation in such financing arrangement shall be dedicated solely to (i) the development of new properties or facilities and/or the renovation of existing properties or facilities or operation of properties or facilities, and/or (ii) the payment of costs and expenditures related to any such financing arrangements including, but not limited to, funding any reserves required in connection therewith, the repayment of any indebtedness incurred in connection therewith, and the payment of fees and expenses incurred in connection with the closing, administration, accounting and/or compliance with respect to the New Markets Tax Credit transaction.

(f) A public benefit corporation created pursuant to this subsection shall not be a political subdivision of the state but shall be a nonprofit corporation organized and governed under the provisions of the laws of this state and shall be a special purpose corporation established to facilitate New Markets Tax Credit transactions consistent with the requirements of this section.

(g) Neither this subsection nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the public entity or public benefit corporation might otherwise have under any laws of this state, and this subsection is cumulative to any such powers. This subsection does and shall be construed to provide a complete additional and alternative method for the doing of the things authorized thereby

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and shall be regarded as supplemental and additional to powers conferred by other laws.

(8) The Mississippi Development Authority shall promulgate rules and regulations to implement the provisions of this section.

**SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is amended as follows:

31-7-13. All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over \$5,000.00.** Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

(b) **Bidding procedure for purchases over \$5,000.00 but not over \$50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars (\$50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than

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counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars (\$5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

**(c) Bidding procedure for purchases over \$50,000.00.**

**(i) Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of



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freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. The purchasing entity may designate the method by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, bids received via a reverse auction, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the



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date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet Web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet Web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise

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specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated Web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated Web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated Web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the Web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening

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to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in

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a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) Agencies and governing authorities may establish secure procedures by which bids may be submitted via electronic means.

(d) **Lowest and best bid decision procedure.**

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in paragraph (d)(i), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when



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purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

### (iii) **Decision procedure for Mississippi**

**Landmarks.** In addition to the decision procedure set forth in paragraph (d)(i), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.



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### (iv) **Construction project negotiations authority.**

If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to

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any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars (\$10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications

to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and, coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the

lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designee, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the



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meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency, or his designee, shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.

**(k) Governing authority emergency purchase procedure.**

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.



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### **(1) Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (1), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when

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replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi,

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or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this section. It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

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(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community and junior colleges, institutions of higher



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learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.**

Purchases of coal and/or natural gas by municipally owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.**

Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.** From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) **Purchases of prison industry products.** From and after January 1, 1991, purchases made by state agencies or governing authorities involving any item that is manufactured, processed, grown or produced from the state's prison industries.



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(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) **Certain school district purchases.** Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) **Purchases of Mississippi Industries for the Blind products.** Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.** Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2), (3) and (4).

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(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (1)(ii).

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

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(xxxix) **Design-build method and dual-phase design-build method of contracting.** Contracts entered into under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

(xxxix) **Toll roads and bridge construction projects.** Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

(xxxix) **Certain purchases under Section 57-1-221.** Contracts entered into pursuant to the provisions of Section 57-1-221.

(xxxix) Certain transfers made pursuant to the provisions of Section 57-105-1(7). Transfers of public property or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall

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contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain



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bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most



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qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

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(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) "Black" means persons having origins in any black racial group of Africa.

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies including, but not limited to, contracts for repair and maintenance, for which the contract will require

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insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 1261

**Description:** Public improvement districts; revise certain statutory provisions relating to.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (H) Referred To Ways and Means
- 2 02/29 (H) Title Suff Do Pass
- 3 03/12 (H) Passed {Vote}
- 4 03/13 (H) Transmitted To Senate
- 5 03/16 (S) Referred To Finance
- 6 04/03 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/11 (H) Concurred in Amend From Senate {Vote}
- 11 04/18 (H) Enrolled Bill Signed
- 12 04/18 (S) Enrolled Bill Signed
- 13 04/24 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 *Adopted* *Voice Vote*

  Amendment Report for House Bill No. 1261

**Code Section:** A 019-0031-0005, A 019-0031-0007, A 019-0031-0009, A 019-0031-0017, A 019-0031-0019, A 019-0031-0023, A 019-0031-0029, A 019-0031-0033, A 019-0031-0035, A 019-0031-0039, A 019-0031-0043, A 019-0031-0045, A 019-0031-0047

----- Additional Information -----

**House Committee:** Ways and Means

**2012 GENERAL LAWS OF MISSISSIPPI, HB 1261**

*Senate Committee:* Finance

*Principal Author:* Smith (39th)



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1261

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 1261  
(As Sent to Governor)

AN ACT TO REVISE CERTAIN PROVISIONS OF THE PUBLIC IMPROVEMENT DISTRICT ACT; TO AMEND SECTION 19-31-5, MISSISSIPPI CODE OF 1972, TO DEFINE ADDITIONAL TERMS USED UNDER THE ACT; TO AMEND SECTION 19-31-7, MISSISSIPPI CODE OF 1972, TO EXTEND THE TIMEFRAME DURING WHICH A PUBLIC HEARING MUST BE HELD ON A PETITION FOR THE ESTABLISHMENT OF A PUBLIC IMPROVEMENT DISTRICT; TO AMEND SECTION 19-31-9, MISSISSIPPI CODE OF 1972, TO INCREASE THE TERM OF OFFICE OF MEMBERS OF A PUBLIC IMPROVEMENT DISTRICT'S BOARD OF DIRECTORS, TO REQUIRE CANDIDATES FOR THE BOARD OF DIRECTORS TO QUALIFY FOR THE OFFICE BY FILING A PRESCRIBED STATEMENT OF INTENT, TO PROVIDE A FORM FOR VOTING BY PROXY, AND TO REQUIRE THE APPOINTMENT OF A BOARD MEMBER IF A MEMBER DOES NOT COMPLETE HIS TERM OF OFFICE; TO AMEND SECTION 19-31-17, MISSISSIPPI CODE OF 1972, TO AUTHORIZE PUBLIC IMPROVEMENT DISTRICTS TO PLEDGE USER CHARGES AND FEES FOR THE PAYMENT OF INDEBTEDNESS OF THE DISTRICT AND TO COVENANT WITH BOND HOLDERS TO COLLECT ASSESSMENTS, CHARGES AND FEES; TO AMEND SECTION 19-31-19, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN SPECIAL POWERS OF PUBLIC UTILITY DISTRICTS RELATING TO PUBLIC IMPROVEMENTS AND COMMUNITY FACILITIES; TO AMEND SECTION 19-31-23, MISSISSIPPI CODE OF 1972, TO REQUIRE A DISTRICT TO HOLD A PUBLIC HEARING BEFORE ISSUING BONDS OR ENTERING INTO A CONTRIBUTION AGREEMENT WITH A PUBLIC UTILITY, TO SPECIFY CERTAIN INFORMATION THAT MUST BE GIVEN IN NOTICE OF THE PUBLIC HEARING ON A PROPOSED CONTRIBUTION AGREEMENT, TO REQUIRE APPRAISALS OF PROPERTY IN THE DISTRICT BEFORE ISSUING BONDS, AND TO AUTHORIZE THE DISTRICT TO INVEST MONIES NOT NEEDED FOR IMMEDIATE USE IN THE MANNER PRESCRIBED; TO AMEND SECTION 19-31-29, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; TO AMEND SECTION 19-31-33, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE PREPAYMENT OF BENEFIT SPECIAL ASSESSMENTS; TO AMEND SECTION 19-31-35, MISSISSIPPI CODE OF 1972, TO DELETE THE TIMEFRAME IN WHICH PROCEEDINGS MAY BE INSTITUTED FOR THE ENFORCEMENT OF LIENS IN FAVOR OF A DISTRICT; TO AMEND SECTION 19-31-39, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF A PUBLIC HEARING ON PROPOSED FEES AND OTHER CHARGES TO BE PUBLISHED IN A NEWSPAPER HAVING GENERAL CIRCULATION IN EACH COUNTY IN WHICH THE DISTRICT IS LOCATED; TO AMEND SECTION 19-31-43, MISSISSIPPI CODE OF 1972, TO REQUIRE ALL LANDOWNERS IN AN AREA PROPOSED TO BE ADDED TO OR TAKEN FROM A DISTRICT TO CONSENT TO THE CHANGE, AND TO PROHIBIT THE DISSOLUTION OF A DISTRICT IF BONDS OR OTHER SECURITY INSTRUMENTS ISSUED BY THE DISTRICT ARE OUTSTANDING; TO AMEND SECTION 19-31-45, MISSISSIPPI CODE OF 1972, TO REQUIRE CERTAIN LANGUAGE TO BE INCLUDED IN INSTRUMENTS OF CONVEYANCE FOR REAL PROPERTY WITHIN A DISTRICT; TO AMEND SECTION 19-31-47, MISSISSIPPI CODE OF 1972, TO SPECIFY THAT A NOTICE OF ESTABLISHMENT OF A PUBLIC IMPROVEMENT DISTRICT MUST BE

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RECORDED IN THE SECTIONAL OR SUBDIVISIONAL INDEX IN EACH INVOLVED COUNTY'S LAND RECORDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 19-31-5, Mississippi Code of 1972, is amended as follows:

19-31-5. As used in this chapter the following terms shall have the meanings ascribed to them in this section unless the context clearly requires otherwise:

(a) "Assessable improvements" means any public improvements and community facilities that the district is empowered to provide in accordance with this chapter.

(b) "Assessment bonds" means special obligations of the district that are payable solely from proceeds of the special assessments levied for an assessable project.

(c) "Board" or "board of directors" means the governing board of the district or, if such board has been abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given to the board by this chapter have been given by law.

(d) "Bond" includes certificate, and the provisions that are applicable to bonds are equally applicable to certificates. The term "bond" includes any assessment bond, refunding bond, revenue bond and other such obligation in the nature of a bond as is provided for in this chapter.

(e) "Public improvement district" or "district" means a special district that is created pursuant to this chapter and limited to the performance of those specialized functions authorized by this chapter, the boundaries of which are contained wholly within a single county or two (2) or more contiguous counties; the governing head of which is a body created, organized and constituted and authorized to function specifically as prescribed in this chapter for the delivery of public improvement services; and the formation powers, governing body, operation,

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duration accountability, requirements for disclosure and termination of which are as required by general law.

(f) "Contribution agreement" means an agreement between a district and a public entity under which the public entity agrees to provide financial or credit support in the form of cash, pledge, guaranty or other enhancement, which agreement must be approved in accordance with Sections 17-13-1 through 17-13-17.

(g) "Cost," when used with reference to any project, includes, but is not limited to:

(i) The expenses of determining the feasibility or practicability of acquisition, construction or reconstruction.

(ii) The cost of surveys, estimates, plans and specifications.

(iii) The cost of improvements.

(iv) Engineering, fiscal and legal expenses and charges.

(v) The cost of all labor, materials, machinery and equipment.

(vi) The cost of all lands, rights, servitudes and franchises acquired.

(vii) Financing charges.

(viii) The creation of initial reserve and debt service funds.

(ix) Working capital.

(x) Interest charges incurred or estimated to be incurred on money borrowed before and during construction and acquisition and for such reasonable period of time after completion of construction or acquisition as the board may determine.

(xi) The cost of issuance of bonds pursuant to this chapter, including advertisements and printing.

(xii) The cost of any election held pursuant to this chapter and all other expenses of issuance of bonds.

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(xiii) The discount, if any, on the sale or exchange of bonds.

(xiv) Administrative expenses.

(xv) Such other expenses as may be necessary or incidental to the acquisition, construction or reconstruction of any project or to the financing thereof, or to the development of any lands within the district.

(h) "District manager" means the manager of the district.

(i) "District roads" means highways, streets, roads, alleys, sidewalks, landscaping, storm drains, bridges and thoroughfares of all kinds and descriptions.

(j) "Landowner" means the owner of land, including real property as it appears in the official records of the county, including a trustee, a private corporation or other entity, and an owner of a condominium unit.

(k) "Market value" means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. Market value must be determined in accordance with Section 27-35-50 and must conform to the Uniform Standards of Professional Appraisers Practice.

(l) "Project" means any development, improvement, property, utility, facility, works, enterprise or service undertaken after April 1, 2002, or established under the provisions of this chapter, including, but not limited to, the following:



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(i) Water management and control for the lands within the district and connection of some or any of such facilities with roads and bridges;

(ii) Water supply, sewer and wastewater management, reclamation and reuse, or any combination thereof;

(iii) Bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill or cut and roadways over levees and embankments;

(iv) District roads equal to or exceeding the specifications of the county in which the district roads are located, including street lights and the location of underground utilities;

(v) Parks and facilities for indoor and outdoor recreational, cultural and educational uses, and other tourism related infrastructure and facilities;

(vi) Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;

(vii) Security, except that the district may not exercise any police power but may contract with the appropriate local governmental agencies for an increased level of such services within the district boundaries;

(viii) Waste collection and disposal;

(ix) Acquisition, construction, repair, renovation, demolition or removal of:

1. Buildings and site improvements (including fixtures);

2. Potable and nonpotable water supply systems;

3. Sewage and waste disposal systems;

4. Storm water drainage and other drainage



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systems;

5. Airport facilities;

6. Rail lines and rail spurs;

7. Port facilities;

8. Highways, streets and other roadways;

9. Fire suppression and prevention systems;

10. Utility distribution systems, including,

but not limited to, water, electricity, natural gas, telephone and other information and telecommunications facilities, whether by wire, fiber or wireless means; however, electrical, natural gas, telephone and telecommunication systems may be constructed, repaired or renovated only for the purpose of completing the project and connecting to existing utility systems. This provision may not be construed to prevent a city, county or natural gas district from supplying utility service that it is authorized to supply in the service area that it is authorized to serve; and

11. Business, industrial and technology parks and the acquisition of land and acquisition or construction of improvements to land connected with any of the preceding purposes;

(x) County purposes authorized by or defined in Sections 17-5-3 and 19-9-1, except Section 19-9-1(f); and

(xi) Municipal purposes authorized by or defined in Sections 17-5-3, 17-17-301 through 17-17-349, 21-27-23 and 21-33-301.

(m) "Public entity" means any governmental agency, county or municipality, which enters into a contribution agreement with a district in accordance with this chapter.

(n) "Qualified voter" means any landowner within the district who is at least eighteen (18) years of age, or the landowner's authorized representative who is at least eighteen (18) years of age. If the landowner of a parcel consists of more than one (1) person or is a corporation, partnership, limited

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liability company or any association or legal entity organized to conduct business, the majority interest of the landowners of the parcel shall select one (1) person who is at least eighteen (18) years of age to serve as the "qualified voter" for the group.

(o) "Revenue bonds" means obligations of the district that are payable from revenues derived from sources other than ad valorem taxes on real or personal property and that do not pledge the property, credit or general tax revenue of the district.

(p) "Sewer system" means any plant, system, facility or property, and additions, extensions and improvements thereto, useful or necessary in connection with the collection, treatment or disposal of sewage.

(q) "Water management and control facilities" means any lakes, canals, ditches, reservoirs, dams, levees, floodways, pumping stations or any other works, structures or facilities for the conservation, control, development, utilization and disposal of water, and any purposes incidental thereto.

(r) "Water system" means any plant system, facility or property, and additions, extensions, and improvements thereto, useful or necessary in connection with the development of sources, treatment or purification and distribution of water.

**SECTION 2.** Section 19-31-7, Mississippi Code of 1972, is amended as follows:

19-31-7. (1) The method for the establishment of a public improvement district shall be pursuant to an ordinance adopted by the governing body of each county in which the land is located granting a petition for the establishment of a public improvement district. The petition for the establishment of a public improvement district shall be filed by the petitioner with the governing body of the county or counties. The petition shall contain:

(a) A description of the boundaries of the district;

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(b) The written consent to the establishment of the district by all landowners in the district;

(c) A designation of five (5) persons to be the initial members of the board of directors, who shall serve in that office until replaced by elected members as provided in Section 19-31-9;

(d) The proposed name of the district;

(e) A map of the proposed district showing existing infrastructure, if any; and

(f) Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services.

(2) A public hearing on the petition shall be conducted by the governing body of each county of the proposed district within sixty (60) days after the petition is filed unless an extension of time is requested by the petitioners and granted by the governing body of each county. The hearing shall be held at an accessible location in each county in which the public improvement district is to be located. The petitioner shall cause a notice of the hearing to be published in a newspaper having general circulation in each county at least once a week for the four (4) successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall be published in the official minutes of the local governing body.

(3) The governing body of each county shall consider the record of the public hearing and any other relevant factors in making its determination to grant or deny a petition for the establishment of a public improvement district.

(4) An ordinance establishing a public improvement district shall include the boundaries of the district, the names of the

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five (5) persons designated to be the initial members of the board of directors of the district and the name of the district.

(5) If all of the land in the area for the proposed district is within the territorial jurisdiction of a municipality, then the petition requesting establishment of a public improvement district under this chapter shall be filed by the petitioner with that particular municipality. In such event, the duties of the county with regard to the petition shall be the duties of the municipality. If any of the land area of a proposed district is within the land area of a municipality, the governing body of the county may not create the district without the approval of the municipality.

(6) The governing body of any governmental agency, county and/or municipality may enter into contribution agreements with the district.

**SECTION 3.** Section 19-31-9, Mississippi Code of 1972, is amended as follows:

19-31-9. (1) The board of the district shall exercise the powers granted to the district pursuant to this chapter. The board shall consist of five (5) members as otherwise provided in this section. Each member shall hold office for an initial term of six (6) years and until a successor is chosen and qualifies. The initial members of the board shall be residents of the state, and at least one (1) of the initial members shall be either a qualified voter within the district or an individual resident of the area immediately adjacent to the district. Upon appointment or election, the board members shall elect a chair who shall conduct board meetings.

(2) (a) Beginning six (6) years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified voter of the district, elected by the qualified voters of the district. There shall be an election of members every six (6) years from the date of the



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ordinance establishing the district. The district manager shall determine the date and time of the election, which election must be held at least twenty (20) days before the anniversary date of the ordinance establishing the district. If a contribution agreement exists, then the governing body of the public entity that is a party to the contribution agreement may appoint one (1) of the five (5) members to the board of the district at the time of the election in lieu of electing that member.

(b) Candidates must qualify in writing by submitting a "Statement of Intent," as prescribed in this paragraph, to the district manager thirty (30) days before the election. The district manager shall prepare a ballot of all candidates qualified to run for office twenty-eight (28) days before the election.

### Statement of Intent

Candidate for (insert name of district) Public Improvement District  
I, (name of candidate as it will appear on the ballot),  
(mailing address, street address, city, state, zip code, telephone  
number of the candidate), certify that I am a qualified voter, as  
defined in Section 19-31-5, Mississippi Code of 1972, of the  
(insert name of public improvement district) Public Improvement  
District in the State of Mississippi; and I do hereby declare my  
candidacy for Board of the (insert name of public improvement  
district) Public Improvement District at the election to be held  
on (insert date of election).

\_\_\_\_\_  
(Signature of candidate) (Date)

Received by \_\_\_\_\_

(Signature) (Title) (Date)

(c) Notice of the election shall be announced at a public meeting of the board at least ninety (90) days before the date of the election and shall be published once a week for two



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(2) consecutive weeks in a newspaper which is in general circulation in the area of the district, the last day of such publication to be not fewer than fourteen (14) days nor more than twenty-eight (28) days before the election. In addition, notice of the election shall be sent by United States first-class mail, not fewer than fourteen (14) days before the election, to all qualified voters at their last known address as shown on the tax rolls. Instructions on how all qualified voters may participate in the election, along with sample proxies, shall be provided as part of the notice required by this paragraph, and the location, date and time of the election shall be included on all instructions and notices.

(d) Each qualified voter shall be entitled to cast only one (1) ballot to elect each of the board members, regardless of the number of parcels owned by that voter within the district. Parcels may not be aggregated for determining the number of ballots allowed to be cast by a qualified voter. A list of qualified voters in the form of a voter roll must be kept current by the district manager and deemed final thirty (30) days before the election.

(e) A qualified voter may vote in person or by proxy in writing. A vote cast by proxy must be submitted at or within fourteen (14) days before the election and must be submitted in the form prescribed in this section. Each proxy must be signed by \* \* \* the qualified voter for which the vote is cast and must contain the typed or printed name of the individual who signed the proxy and the street address, legal description of the property or the property's tax parcel identification number \* \* \*. The signature on a proxy need not be notarized. All votes cast by proxy must be reflected in the voter roll.

### **Proxy for Election**

(Insert name of district) Public Improvement District

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I, \_\_\_\_\_, (name of qualified voter);  
\_\_\_\_\_  
(street address);  
\_\_\_\_\_  
(legal description);  
\_\_\_\_\_  
(tax parcel identification number).

[NOTE: To be considered, this proxy must contain at least one (1)  
of either: the street address; legal description; or tax parcel  
identification number.]

1. Do constitute and appoint \_\_\_\_\_  
(name), attorney and agent for me, and in my  
name, place and stead, to vote as my proxy for the election of  
members of the Board of Directors of the (name of district) Public  
Improvement District on (insert date), at the (insert voting  
location/facility name with street address); OR (only choose one)

2. Do hereby cast my vote for:  
\_\_\_\_\_  
[print or type name of  
person being voted for - PLEASE NOTE THAT YOUR VOTE MUST BE FOR A  
QUALIFIED VOTER (AS DEFINED IN MISSISSIPPI CODE SECTION 19-31-5)  
OF THE DISTRICT. A QUALIFIED VOTER MEANS ANY LANDOWNER OF THE  
DISTRICT WHO IS AT LEAST EIGHTEEN (18) YEARS OF AGE OR AN  
AUTHORIZED REPRESENTATIVE OF THE LANDOWNER WHO IS ALSO AT LEAST  
EIGHTEEN (18) YEARS OF AGE.] to be elected as a member of the  
Board of Directors of the (name of district) Public Improvement  
District for a term beginning (date of term) and ending six (6)  
years from that date or until a successor is chosen.

I understand that I have the right to revoke this proxy at  
any time before the election. I understand that I have the right  
to be present in person at the election.

I have executed this proxy on (insert date).

\_\_\_\_\_  
(Printed Name of Qualified Voter)  
\_\_\_\_\_  
(Signature of Qualified Voter)

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(f) A qualified voter may cast only one (1) vote for each of the five (5) board member positions. When a qualified voter casts a vote for the same person more than once, only one (1) of the votes cast for that person will be counted. When a qualified voter casts more votes to elect board members than he or she is entitled to cast, all votes are invalid, and the qualified voter is deemed to have voted for none of them. When a qualified voter casts fewer votes to elect board members than he or she is entitled to cast, all votes cast by the qualified voter must be counted, but no votes shall be counted more than once.

(g) If a board member dies, resigns or otherwise is prevented from serving as a board member, the board of the district shall appoint a member to fill the remainder of the board member's term. If no qualified voter is willing to serve on the board of the district, the governing body that established the district shall appoint members as necessary to fill any vacancy for the remainder of the term.

(3) Members of the board shall be known as directors and, upon entering into office, shall take an oath of office. They shall hold office for the terms for which they were elected or appointed and until their successors are chosen and qualified. If during the term of office, a vacancy occurs, the remaining members of the board shall fill the vacancy by an appointment for the remainder of the unexpired term.

(4) A majority of the members of the board constitutes a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the district shall be upon a vote of a majority of the members present unless general law or a rule of the district requires a greater number. If a quorum cannot be obtained in a board meeting, the governing body that established the district shall appoint members as necessary to replace any board member missing three (3) consecutive meetings.

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(5) As soon as practicable after each election or appointment, the board shall organize by electing one (1) of its members as chair and by electing a secretary, who need not be a member of the board, and such other officers as the board may deem necessary.

(6) The board shall keep a permanent minute book in which shall be recorded minutes of all meetings, resolutions, ordinances, proceedings and all corporate acts.

(7) Members of the board may receive per diem compensation for services in an amount as provided under Section 25-3-69, and shall be entitled to expenses necessarily incurred in the discharge of their duties in accordance with Section 25-3-41. Any payments for compensation and expenses shall be paid from funds of the district.

**SECTION 4.** Section 19-31-17, Mississippi Code of 1972, is amended as follows:

19-31-17. The district shall have, and the board may exercise, the power:

(a) To sue and be sued in the name of the district.

(b) To adopt and use a seal and authorize the use of a facsimile thereof.

(c) To acquire, by purchase, gift, devise or otherwise, and to dispose of, real and personal property.

(d) To dedicate, donate or convey in any manner, real and personal property under such terms and conditions as may be agreed upon, to:

(i) Nonprofit entities that have been issued a certificate of public convenience and necessity by the Public Service Commission; or

(ii) Governmental entities.

(e) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers.



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(f) To contract for the services of consultants to perform planning, engineering, financial, legal, or other appropriate services of a professional nature.

(g) To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government or any person or any organization for any district purposes and enter into agreements required in connection therewith; and to hold, use and dispose of such monies or property for any district purposes in accordance with the terms of the gift, grant, loan or agreement relating thereto.

(h) To adopt bylaws prescribing the powers, duties and functions of the officers of the district, the conduct of the business of the district and the maintenance of records.

(i) To maintain an office at such place or places as it may designate within a county in which the district is located, which office must be reasonably accessible to the landowners. Meetings shall be held at such office or such other location as may be designated by the board.

(j) To hold, control and acquire by donation, or purchase or dispose of, any public servitudes or dedications to public use and to make use of such servitudes or dedications for any of the purposes authorized by this chapter.

(k) To lease as lessor or lessee to or from any person, firm, corporation, association, or body public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out any of the purposes authorized by this chapter.

(l) To borrow money and issue bonds, certificates, warrants, notes or other evidence of indebtedness as provided in this chapter; to levy such special assessments as may be



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authorized; and to charge, collect and enforce fees and other user charges.

(m) To acquire property within the boundaries of the district for public use through condemnation, exercised pursuant to Sections 11-27-1 through 11-27-51, subject to the approval of the governing body of the county and/or the municipality that enacted the ordinance establishing the district.

(n) To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the district activities and services; to finance projects and to pledge user charges and fees for the payment of any bond or other indebtedness of the district; and to enforce the receipt and collection of user charges and fees in the manner prescribed by resolution not inconsistent with law.

(o) To cooperate \* \* \*, contract, or enter into contribution agreements with other governmental agencies, including the governing bodies of counties and/or municipalities, as may be necessary, convenient, incidental or proper in connection with any of the powers, duties or purposes authorized by this chapter.

(p) To determine, order, levy, impose, collect and enforce special assessments pursuant to this chapter.

(q) To enter into interlocal cooperative agreements pursuant to Sections 17-13-1 through 17-13-17.

(r) To covenant with the holders of assessment bonds or other obligations that it will diligently and faithfully enforce and collect all the special assessments, charges and fees, and interest and penalties thereon.

(s) To exercise all of the powers necessary and proper in connection with any of the powers, duties or purposes authorized by this chapter.

**SECTION 5.** Section 19-31-19, Mississippi Code of 1972, is amended as follows:

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19-31-19. The district shall have, and the board may exercise, any or all of the special powers relating to public improvements and community facilities authorized by this chapter. The district shall have the power to finance, fund, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain systems, facilities, projects and basic infrastructures that are within the district, or which benefit or serve the district, for the following:

(a) Water management and control for the lands within the district and connection of some or any of such facilities with roads and bridges;

(b) Water supply, sewer and wastewater management, reclamation and reuse, or any combination thereof;

(c) Bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill or cut and roadways over levees and embankments;

(d) District roads equal to or exceeding the specifications of the county in which such district roads are located, including street lights and the location of underground utilities;

(e) Parks and facilities for indoor and outdoor recreational, cultural and educational uses, and other tourism related infrastructure and facilities;

(f) Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;

(g) Security, except that the district may not exercise any police power, but may contract with the appropriate local governmental agencies for an increased level of such services within the district boundaries;

(h) Waste collection and disposal;

(i) Systems, as defined in Section 21-27-11(b); and

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(j) Projects, as defined in this chapter.

**SECTION 6.** Section 19-31-23, Mississippi Code of 1972, is amended as follows:

19-31-23. (1) The district may issue and sell from time to time bonds, notes, negotiable notes, tax anticipation notes, bond anticipation notes, other fund anticipation notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, certificates of participation, debentures, warrants, commercial paper or other obligations or evidences of indebtedness to provide funds for and to fulfill and achieve its public purpose or corporate purposes, as set forth in this chapter, including, but not limited to, the payment of all or a portion of the costs of a project, to provide amounts necessary for any corporate purposes, including incidental expenses in connection with the issuance of the obligations, the payment of principal and interest on the obligations of the district, the establishment of reserves to secure such obligations, and all other purposes and expenditures of the district incident to and necessary or convenient to carry out its public functions or corporate purposes, and any credit enhancement for such obligations.

(2) Before the issuance of any bonds as authorized under this chapter, the district shall hold a public hearing on the advisability of the indebtedness. Notice of the hearing must be published twice in a newspaper having general circulation in each county where the district is located. The final publication of notice must be at least ten (10) days before the public hearing. The district shall give, by United States first-class mail, written notice of the public hearing to all qualified voters in the district. The notice must be addressed to "Property Owner" and mailed by United States first-class mail to the current address of the owner, as reflected on tax rolls of property located in the district.

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(3) (a) If a district proposes to enter into a contribution agreement with a public entity for any bond issue, the public entity shall hold a public hearing on the advisability of the contribution agreement for any bonds the district proposes to enter.

(b) Notice of the hearing must be published twice in a newspaper having general circulation in each county where the public entity is located. The final publication of notice must be at least ten (10) days before the public hearing.

(c) The notice must state the following:

(i) Time and place of the hearing;

(ii) General nature of the proposed improvement;

(iii) Estimated cost of the improvement;

(iv) Boundaries of the public improvement

district;

(v) Proposed method of assessment;

(vi) Proposed amount and term of indebtedness;

(vii) Name of the public entity entering into the contribution agreement; and

(viii) Proposed amount of contribution by the public entity.

(d) The hearing may be adjourned from time to time until the governing body of the public entity makes findings by resolution as to the following:

(i) Advisability of the improvement;

(ii) Nature of the improvement;

(iii) Estimated cost of the improvement;

(iv) Boundaries of the public improvement

district;

(v) Method of assessment;

(vi) Market value of real property within the district determined in accordance with paragraph (c) of this subsection; and



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(vii) Terms of the contribution agreement.

(e) As provided in subsection (3)(d)(vi) of this section, the governing body of the public entity shall obtain an appraisal in accordance with the Uniform Standards of Professional Appraisal Practice, with special consideration given to the Income Approach to Value using a discounted cash flow analysis of the entire commercial, residential or industrial subdivision. The appraisal must satisfy all parties to the contribution agreement that the value of the property in the district will be sufficient to ensure payment of any obligation to which a public entity is subject.

(4) Except as may otherwise be provided by the district, all obligations issued by the district shall be negotiable instruments and payable solely from the levy of any special assessment by the district or from any other sources whatsoever that may be available to the district but shall not be secured by the full faith and credit of the state or the county or municipality that created the district.

(5) Obligations shall be authorized, issued and sold by a resolution or resolutions of the district adopted as provided in this chapter. Such bonds or obligations may be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, including variable, adjustable, or zero interest rates, be payable at such time or times, be in such denominations, be sold at such price or prices, at public or private negotiated sale, after advertisement as is provided for in Section 17-21-53(2) for and in connection with any public sale, be in such form, carry such registration and exchangeability privileges, be payable at such place or places, be subject to such terms of redemption and be entitled to such priorities on the income, revenue and receipts of, or available to, the district as may be provided by the district in the resolution or resolutions



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providing for the issuance and sale of the bonds or obligations of the district.

(6) The obligations of the district shall be signed by such directors or officers of the district by either manual or facsimile signatures as shall be determined by resolution or resolutions of the district, and shall have impressed or imprinted thereon the seal of the district or a facsimile thereof.

(7) Any obligations of the district may be validly issued, sold and delivered notwithstanding that one or more of the directors or officers of the district signing such obligations or whose facsimile signature or signatures may be on the obligations shall have ceased to be such director or officer of the district at the time such obligations shall actually have been delivered.

(8) Obligations of the district may be sold in such manner and from time to time as may be determined by the district to be most beneficial, and the district may pay all expenses, premiums, fees or commissions that it deems necessary or advantageous in connection with the issuance and sale thereof, subject to the provisions of this chapter.

(9) The district may authorize the establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve or such other funds or reserves as the district may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture of trust or similar instrument or agreement pursuant to the provisions of which the issuance of bonds or other obligations of the district may be authorized.

(10) Notwithstanding any other law to the contrary, but subject to any agreement with bondholders or noteholders, monies of the district not required for immediate use, including proceeds from the sale of any bonds, notes or other obligations, may be invested in the following:

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(a) Obligations of any municipality, the State of Mississippi or the United States of America;

(b) Obligations of which the principal and interest are guaranteed by the State of Mississippi or the United States of America;

(c) Obligations of any corporation wholly owned by the United States of America;

(d) Obligations of any corporation sponsored by the United States of America which are, or may become, eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(e) Obligations of insurance firms or other corporations whose investments are rated "A" or better by recognized rating companies;

(f) Certificates of deposit or time deposits of qualified depositories of the State of Mississippi as approved by the State Depository Commission, secured in such manner, if any, as the commission determines appropriate;

(g) Contracts for the purchase and sale of obligations of the type described in paragraphs (a) through (e) of this subsection;

(h) Repurchase agreements secured by obligations described in paragraphs (a) through (e) of this subsection; and

(i) Money market funds, the assets of which are required to be invested in obligations described in paragraphs (a) through (f) of this subsection.

(11) Any cost, obligation or expense incurred for any of the purposes specified in this chapter shall be a part of the project costs and may be paid or reimbursed as such out of the proceeds of bonds or other obligations issued by the district.

(12) Neither the directors of the board nor any person executing the bonds shall be personally liable for the bonds or be subject to any personal liability by reason of the issuance

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thereof. No earnings or assets of the district shall accrue to the benefit of any private persons. However, the limitation of liability provided for in this subsection shall not apply to any gross negligence or criminal negligence on the part of any director or person executing the bonds.

(13) The district may avail itself of the provisions of Sections 31-13-1 through 31-13-11.

(14) This chapter constitutes full and complete authority for the issuance of bonds and the exercise of the powers of the district provided herein. No procedures or proceedings, publications, notices, consents, approvals, orders, acts or things by the board or any board, officers, commission, department, agency or instrumentality of the district, other than those required by this chapter, shall be required to perform anything under this chapter, except that the issuance or sale of bonds pursuant to the provisions of this chapter shall comply with the general law requirements applicable to the issuance or sale of bonds by the district. Nothing in this chapter shall be construed to authorize the district to utilize bond proceeds to fund the ongoing operations of the district.

(15) Before incurring any debt as provided in subsection (1) of this section, the district may, but shall not be required to, secure an agreement from one or more developers obligating such developer or developers:

(a) To effect the completion of all or any portion of a project at no cost to the district;

(b) To pay all or any portion of the real property taxes due on the project in a timely manner; and

(c) To maintain and operate all or any portion of the buildings or other facilities or improvements of the project in such a manner as to preserve property values.

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No breach of any such agreement shall impose any pecuniary liability upon a district or any charge upon its general credit or against its taxing powers.

Additionally, the district may enter into an agreement with the developer under which the developer may construct all or any part of the project with private funds in advance of issuance of bonds and may be reimbursed by the district for actual costs incurred by the developer upon issuance and delivery of bonds and receipt of the proceeds, conditioned upon dedication of the project by the developer to the district, a governmental agency, a county or a municipality to assure public use and access. This condition shall not apply to the privately owned portion of a project for which the Mississippi Development Authority has issued a certificate of convenience and necessity pursuant to the Regional Economic Development Act.

As used in this section, the term "developer" means any entity or natural person which enters into an agreement with a district whereby the developer agrees to construct, operate and maintain or procure the construction, operation and maintenance of a project or projects, or portions thereof, upon land within the district.

**SECTION 7.** Section 19-31-29, Mississippi Code of 1972, is amended as follows:

19-31-29. Bonds issued under the provisions of this chapter shall be limited obligations of the district payable solely from the sources pledged for the payment thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the full faith and credit of the state nor the full faith and credit of any governmental unit of the state are pledged to the payment of the principal of or the interest on such bonds. Except as provided in a contribution agreement, the issuance of bonds under the provisions of this chapter shall not directly, indirectly or contingently obligate the state or any governmental



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unit of the state to levy any taxes or to make any appropriation for their payment arising out of contracts authorized under this chapter.

**SECTION 8.** Section 19-31-33, Mississippi Code of 1972, is amended as follows:

19-31-33. (1) The board shall annually determine, order and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance district facilities and projects that are levied under this chapter. These assessments may be due and collected during each year that county taxes are due and collected, in which case such annual installment and levy shall be evidenced to and certified to the assessor by the board not later than August 31 of each year. Such assessments shall be entered by the assessor on the county tax rolls and shall be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds thereof shall be paid to the district. These benefit special assessments shall be a lien on the property against which assessed until paid and shall be collectible and enforceable in like manner as county property taxes. All statutes regulating the collection and enforcement of county property taxes shall apply to the enforcement and collection of the benefit special assessments levied under this section. The amount of the assessment for the exercise of the district's powers under this chapter shall be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land.

(2) To maintain and preserve the facilities and projects of the district, the board shall levy a maintenance special assessment. This assessment may be evidenced by and certified to the assessor by the board of directors not later than August 31 of



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each year and shall be entered by the assessor on the county tax rolls and shall be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds therefrom shall be paid to the district. These maintenance special assessments shall be a lien on the property against which assessed until paid and shall be collectible and enforceable in like manner as county property taxes and all statutes regulating the collection and enforcement of county property taxes shall apply to the enforcement and collection of the benefit special assessments levied under this section. The amount of the maintenance special assessment for the exercise of the district's powers under this chapter shall be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

(3) Benefit special assessments and maintenance special assessments authorized by this section shall be levied and payable in annual installments for each year for which bonds secured by the assessment are outstanding. The tax collector shall collect and enforce benefit special assessments and maintenance special assessments in the same manner and at the same time as ad valorem taxes. Benefit special assessments and maintenance special assessments shall constitute a lien on the property against which assessed until paid and shall be on a parity with the lien of state, county, municipal and school board property taxes.

(4) The tax assessor and tax collector are entitled to reasonable compensation for preparing the rolls and collecting the assessments.

(5) District assessments may be made payable in no more than forty (40) yearly installments. Benefit special assessments are prepayable. Any prepayment of benefit special assessments must be

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credited against the payor's pro rata share of principal and interest of the indebtedness.

**SECTION 9.** Section 19-31-35, Mississippi Code of 1972, is amended as follows:

19-31-35. Any lien in favor of the district arising under this chapter may be enforced by the district in a court of competent jurisdiction as provided by law. \* \* \*

**SECTION 10.** Section 19-31-39, Mississippi Code of 1972, is amended as follows:

19-31-39. (1) The district may prescribe, fix, establish and collect rates, fees, rentals or other charges for the facilities and services furnished by the district, within the limits of the district, including, but not limited to, recreational facilities, water management and control facilities and water and sewer systems. The district may also recover the costs of making connection with any district facility or system and provide for reasonable penalties against any user or property for any such rates, fees, rentals or other charges that are delinquent.

(2) No such rates, fees, rentals or other charges for any of the facilities or services of the district may be fixed until after a public hearing at which all the users of the proposed facility or services shall have an opportunity to be heard concerning the proposed rates, fees, rentals or other charges. Notice of such public hearing setting forth the proposed schedule of rates, fees, rentals and other charges shall be published in a newspaper having general circulation in each county where the district is located once at least ten (10) days before such public hearing.

**SECTION 11.** Section 19-31-43, Mississippi Code of 1972, is amended as follows:

19-31-43. (1) The boundaries of the district may be contracted or expanded in the same manner in which the district

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was created pursuant to this chapter; however, the petition must be filed by the board and must contain the written consent of all landowners within only the proposed area of expansion or contraction.

(2) (a) Subject to the limitations of paragraph (b) of this subsection, the district may be terminated or dissolved in one (1) of the following ways:

(i) The district may be terminated or dissolved upon the transfer of all the public improvement services of the district to a unit of local government. The district shall be terminated in accordance with a plan of termination which shall be adopted by the board of directors and filed with the clerk of the court.

(ii) If, within five (5) years after the effective date of the ordinance creating the district, a landowner has not received a development permit on some part or all of the area covered by the district, then the district will be automatically dissolved and a court of competent jurisdiction shall cause a statement to that effect to be filed in the public records.

(iii) If the district has become inactive, the county or municipality that created the district shall be informed and shall take appropriate action.

(b) Following the establishment of the district with no timely appeal challenging the district, a district may not be dissolved or terminated if any bonds issued by the district, or bonds for which the district is obligated, are outstanding or are secured by special assessments or other security instruments to which the district is a party in connection with the bonds.

**SECTION 12.** Section 19-31-45, Mississippi Code of 1972, is amended as follows:

19-31-45. After the establishment of a district under this chapter, each contract and instrument of conveyance of a parcel of real property \* \* \* within the district shall include, immediately

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before the space reserved in the contract and instrument of conveyance for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract and the instrument of conveyance: "THE (Name of District) PUBLIC IMPROVEMENT DISTRICT MAY IMPOSE AND LEVY ASSESSMENTS ON THIS PROPERTY. THESE ASSESSMENTS PAY THE CONSTRUCTION, OPERATION AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW."

However, the failure to include the above language does not and may not be deemed to invalidate any assessment levied by the district or the contract or instrument of conveyance of the real property.

**SECTION 13.** Section 19-31-47, Mississippi Code of 1972, is amended as follows:

19-31-47. Within thirty (30) days after the effective date of the ordinance establishing a public improvement district under this chapter, the district shall cause to be recorded in the sectional index and the subdivisional index, if applicable, in the land records in each county in which it is located a "Notice of Establishment of the \_\_\_\_\_ Public Improvement District." The notice shall include the legal description of the district and a copy of the disclosure statement specified in this chapter.

**SECTION 14.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

House Bill 1266

**Description:** Mississippi Major Economic Impact Authority; revise authority to transfer property.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (H) Referred To Ways and Means
- 2 03/05 (H) Title Suff Do Pass Comm Sub
- 3 03/12 (H) Committee Substitute Adopted
- 4 03/12 (H) Passed {Vote}
- 5 03/14 (H) Transmitted To Senate
- 6 03/16 (S) Referred To Finance
- 7 04/03 (S) Title Suff Do Pass
- 8 04/05 (S) Passed {Vote}
- 9 04/09 (S) Transmitted To House
- 10 04/12 (S) Enrolled Bill Signed
- 11 04/12 (H) Enrolled Bill Signed
- 12 04/19 Approved by Governor

**Code Section:** A 057-0075-0011

----- Additional Information -----

**House Committee:** Ways and Means

**Senate Committee:** Finance

**Principal Author:** Smith (39th)



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Smith (39th)

To: Ways and Means

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1266

AN ACT TO AMEND SECTION 57-75-11, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI MAJOR ECONOMIC IMPACT AUTHORITY TO CONVEY PROPERTY ACQUIRED UNDER THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT TO ENTITIES FOR PURPOSES IN FURTHERANCE OF ECONOMIC DEVELOPMENT AS DETERMINED BY THE AUTHORITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 57-75-11, Mississippi Code of 1972, is amended as follows:

57-75-11. The authority, in addition to any and all powers now or hereafter granted to it, is empowered and shall exercise discretion and the use of these powers depending on the circumstances of the project or projects:

(a) To maintain an office at a place or places within the state.

(b) To employ or contract with architects, engineers, attorneys, accountants, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation.

(c) To make such applications and enter into such contracts for financial assistance as may be appropriate under applicable federal or state law.

(d) To apply for, accept and utilize grants, gifts and other funds or aid from any source for any purpose contemplated by the act, and to comply, subject to the provisions of this act, with the terms and conditions thereof.

(e) (i) To acquire by purchase, lease, gift, or in other manner, including quick-take eminent domain, or obtain

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

options to acquire, and to own, maintain, use, operate and convey any and all property of any kind, real, personal, or mixed, or any interest or estate therein, within the project area, necessary for the project or any facility related to the project. The provisions of this paragraph that allow the acquisition of property by quick-take eminent domain shall be repealed by operation of law on July 1, 1994; and

(ii) Notwithstanding any other provision of this paragraph (e), from and after November 6, 2000, to exercise the right of immediate possession pursuant to the provisions of Sections 11-27-81 through 11-27-89 for the purpose of acquiring land, property and/or rights-of-way in the county in which a project as defined in Section 57-75-5(f)(iv)1 is located, that are necessary for such project or any facility related to the project.

(f) To acquire by purchase or lease any public lands and public property, including sixteenth section lands and lieu lands, within the project area, which are necessary for the project. Sixteenth section lands or lieu lands acquired under this act shall be deemed to be acquired for the purposes of industrial development thereon and such acquisition will serve a higher public interest in accordance with the purposes of this act.

(g) If the authority identifies any land owned by the state as being necessary, for the location or use of the project, or any facility related to the project, to recommend to the Legislature the conveyance of such land or any interest therein, as the Legislature deems appropriate.

(h) To make or cause to be made such examinations and surveys as may be necessary to the planning, design, construction and operation of the project.

(i) From and after the date of notification to the authority by the enterprise that the state has been finally selected as the site of the project, to acquire by condemnation

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

and to own, maintain, use, operate and convey or otherwise dispose of any and all property of any kind, real, personal or mixed, or any interest or estate therein, within the project area, necessary for the project or any facility related to the project, with the concurrence of the affected public agency, and the exercise of the powers granted by this act, according to the procedures provided by Chapter 27, Title 11, Mississippi Code of 1972, except as modified by this act.

(i) Except as otherwise provided in subparagraph (iii) of this paragraph (i), in acquiring lands by condemnation, the authority shall not acquire minerals or royalties in minerals unless a competent registered professional engineer shall have certified that the acquisition of such minerals and royalties in minerals is necessary for purposes of the project; provided that limestone, clay, chalk, sand and gravel shall not be considered as minerals for the purposes of subparagraphs (i) and (ii) of this paragraph (i);

(ii) Unless minerals or royalties in minerals have been acquired by condemnation or otherwise, no person or persons owning the drilling rights or the right to share in production of minerals shall be prevented from exploring, developing, or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines and other means of transporting interests on any land or interest therein of the authority held or used for the purposes of this act; but any such activities shall be under such reasonable regulation by the authority as will adequately protect the project contemplated by this act as provided in paragraph (i) of this section; and

(iii) In acquiring lands by condemnation, including the exercise of immediate possession, for a project, as defined in Section 57-75-5(f)(iv)1, the authority may acquire minerals or royalties in minerals.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

(j) To negotiate the necessary relocation or rerouting of roads and highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines and related facilities, or to require the anchoring or other protection of any of these, provided due compensation is paid to the owners thereof or agreement is had with such owners regarding the payment of the cost of such relocation, and to acquire by condemnation or otherwise easements or rights-of-way for such relocation or rerouting and to convey the same to the owners of the facilities being relocated or rerouted in connection with the purposes of this act.

(k) To negotiate the necessary relocation of graves and cemeteries and to pay all reasonable costs thereof.

(l) To perform or have performed any and all acts and make all payments necessary to comply with all applicable federal laws, rules or regulations including, but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USCS 4601, 4602, 4621 to 4638, and 4651 to 4655) and relocation rules and regulations promulgated by any agency or department of the federal government.

(m) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate any and all components of the project or any facility related to the project, with the concurrence of the affected public agency, within the project area, necessary to the project and to the exercise of such powers, rights, and privileges granted the authority.

(n) To incur or defray any designated portion of the cost of any component of the project or any facility related to the project acquired or constructed by any public agency.

(o) (i) To lease, sell or convey any or all property acquired by the authority under the provisions of this act to the enterprise, its successors or assigns, and/or any entity for



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purposes in furtherance of economic development as determined by the authority, and in connection therewith to pay the costs of title search, perfection of title, title insurance and recording fees as may be required. The authority may provide in the instrument conveying such property a provision that such property shall revert to the authority if, as and when the property is declared by the transferee to be no longer needed.

(ii) To lease, sell, transfer or convey on any terms agreed upon by the authority any or all real and personal property, improvements, leases, funds and contractual obligations of a project as defined in Section 57-75-5(f)(vi) and conveyed to the State of Mississippi by a Quitclaim Deed from the United States of America dated February 23, 1996, filed of record at pages 511 to 524, Deed Book Number B179, Chancery Clerk's Office, Tishomingo County, Mississippi, to any governmental authority located within the geographic boundaries of the county wherein such project exists upon agreement of such governmental authority to undertake and assume from the State of Mississippi all obligations and responsibilities in connection with ownership and operation of the project. Property leased, sold, transferred or otherwise conveyed by the authority under this paragraph (o) shall be used only for economic development purposes.

(p) To enter into contracts with any person or public agency, including, but not limited to, contracts authorized by Section 57-75-17, in furtherance of any of the purposes authorized by this act upon such consideration as the authority and such person or public agency may agree. Any such contract may extend over any period of time, notwithstanding any rule of law to the contrary, may be upon such terms as the parties thereto shall agree, and may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of such bonds, and all other obligations specified therein are paid or terminated. Any such contract shall be binding upon the parties



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

thereto according to its terms. Such contracts may include an agreement to reimburse the enterprise, its successors and assigns for any assistance provided by the enterprise in the acquisition of real property for the project or any facility related to the project.

(q) To establish and maintain reasonable rates and charges for the use of any facility within the project area owned or operated by the authority, and from time to time, to adjust such rates and to impose penalties for failure to pay such rates and charges when due.

(r) To adopt and enforce with the concurrence of the affected public agency all necessary and reasonable rules and regulations to carry out and effectuate the implementation of the project and any land use plan or zoning classification adopted for the project area, including, but not limited to, rules, regulations, and restrictions concerning mining, construction, excavation or any other activity the occurrence of which may endanger the structure or operation of the project. Such rules may be enforced within the project area and without the project area as necessary to protect the structure and operation of the project. The authority is authorized to plan or replan, zone or rezone, and make exceptions to any regulations, whether local or state, with the concurrence of the affected public agency which are inconsistent with the design, planning, construction or operation of the project and facilities related to the project.

(s) To plan, design, coordinate and implement measures and programs to mitigate impacts on the natural environment caused by the project or any facility related to the project.

(t) To develop plans for technology transfer activities to ensure private sector conduits for exchange of information, technology and expertise related to the project to generate opportunities for commercial development within the state.

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(u) To consult with the State Department of Education and other public agencies for the purpose of improving public schools and curricula within the project area.

(v) To consult with the State Board of Health and other public agencies for the purpose of improving medical centers, hospitals and public health centers in order to provide appropriate health care facilities within the project area.

(w) To consult with the Office of Minority Business Enterprise Development and other public agencies for the purpose of developing plans for technical assistance and loan programs to maximize the economic impact related to the project for minority business enterprises within the State of Mississippi.

(x) To deposit into the "Yellow Creek Project Area Fund" created pursuant to Section 57-75-31:

(i) Any funds or aid received as authorized in this section for the project described in Section 57-75-5(f)(vi), and

(ii) Any funds received from the sale or lease of property from the project described in Section 57-75-5(f)(vi) pursuant to the powers exercised under this section.

(y) To manage and develop the project described in Section 57-75-5(f)(vi).

(z) To promulgate rules and regulations necessary to effectuate the purposes of this act.

(aa) To negotiate a fee-in-lieu with the owners of the project.

(bb) To enter into contractual agreements to warrant any site work for a project defined in Section 57-75-5(f)(iv)1; provided, however, that the aggregate amount of such warranties shall not exceed Fifteen Million Dollars (\$15,000,000.00).

(cc) To provide grant funds to an enterprise operating a project defined in Section 57-75-5(f)(iv)1 in an amount not to exceed Thirty-nine Million Dollars (\$39,000,000.00).

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(dd) (i) To own surface water transmission lines constructed with the proceeds of bonds issued pursuant to this act and in connection therewith to purchase and provide water to any project defined in Section 57-75-5(f)(iv) and to certificated water providers; and

(ii) To lease such surface water transmission lines to a public agency or public utility to provide water to such project and to certificated water providers.

(ee) To provide grant funds to an enterprise operating a project defined in Section 57-75-5(f)(v) or, in connection with a facility related to such a project, for job training, recruiting and infrastructure.

(ff) To enter into negotiations with persons proposing projects defined in Section 57-75-5(f)(xi) and execute acquisition options and conduct planning, design and environmental impact studies with regard to such project.

(gg) To establish such guidelines, rules and regulations as the authority may deem necessary and appropriate from time to time in its sole discretion, to promote the purposes of this act.

(hh) In connection with projects defined in Section 57-75-5(f)(ii):

(i) To provide grant funds or loans to a public agency or an enterprise owning, leasing or operating a project defined in Section 57-75-5(f)(ii) in amounts not to exceed the amount authorized in Section 57-75-15(3)(b);

(ii) To supervise the use of all such grant funds or loans; and

(iii) To requisition money in the Mississippi Major Economic Impact Authority Revolving Loan Fund in connection with such loans.

(ii) In connection with projects defined under Section 57-75-5(f)(xiv):

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

(i) To provide grant funds or loans to an enterprise owning, leasing or operating a project defined in Section 57-75-5(f)(xiv); however, the aggregate amount of any such loans under this paragraph (ii) shall not exceed Eighteen Million Dollars (\$18,000,000.00) and the aggregate amount of any such grants under this paragraph (ii) shall not exceed Six Million Dollars (\$6,000,000.00);

(ii) To supervise the use of all such grant funds or loans; and

(iii) Notwithstanding any provision of this act to the contrary, such loans shall be for a term not to exceed twenty (20) years as may be determined by the authority, shall bear interest at such rates as may be determined by the authority, shall, in the sole discretion of the authority, be secured in an amount and a manner as may be determined by the authority.

(jj) In connection with projects defined under Section 57-75-5(f)(xviii):

(i) To provide grant funds of Twenty-five Million Dollars (\$25,000,000.00) to an enterprise owning or operating a project defined in Section 57-75-5(f)(xviii) to be used for real estate improvements and which may be disbursed as determined by the authority;

(ii) To provide loans to an enterprise owning or operating a project defined in Section 57-75-5(f)(xviii) or make payments to a lender providing financing to the enterprise; subject to the following provisions:

1. Not more than Ten Million Dollars (\$10,000,000.00) may be loaned to such an enterprise for the purpose of defraying costs incurred by the enterprise for site preparation and real property improvements during the construction of the project in excess of budgeted costs; however, the amount of any such loan shall not exceed fifty percent (50%) of such excess costs;



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### 2. Not more than Sixty Million Dollars

(\$60,000,000.00) may be loaned to such an enterprise or paid to a lender providing financing to the enterprise for purposes determined appropriate by the authority, and the enterprise shall be obligated to repay the amount of the loan or payment plus any expenses incurred by the state as a result of the issuance of bonds pursuant to Section 57-75-15(3)(p); however, no such loan or payment may be made before the beginning of the fifth year after issuance by the enterprise of debt in like amount the proceeds of which are to be used in connection with the project;

(iii) To supervise the use of all such loan funds;

(iv) Loans under this paragraph (jj) may be for any term determined appropriate by the authority provided that the payments on any loan must be in an amount sufficient to pay the state's debt service on bonds issued for the purpose of providing funds for such a loan; and

(v) The repayment obligation of the enterprise for any loan or payment authorized under this paragraph (jj) shall, in the discretion of the authority, be secured in an amount and a manner as may be determined by the authority.

(kk) In connection with projects defined in Section 57-75-5(f)(xxi) or a facility related to such a project:

(i) To provide grant funds to reimburse public agencies, Itawamba Community College, Northeast Mississippi Community College, and/or East Mississippi Community College, public or private nonprofits or an enterprise owning or operating a project as defined in Section 57-75-5(f)(xxi) for site preparation, real estate improvements, utilities, railroads, roads, infrastructure, job training, recruiting and any other expenses approved by the authority in amounts not to exceed the amount authorized in Section 57-75-15(3)(s);

(ii) To supervise the use of all such grant funds so reimbursed; and



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(iii) To enter into contractual agreements to warrant site preparation and availability for a project defined in Section 57-75-5(f)(xxi).

(ll) In connection with a project related to a Tier One supplier:

(i) To provide grant funds to reimburse public agencies, public or private nonprofits and Tier One suppliers for site preparation, real estate improvements, utilities, railroads, roads, infrastructure, job training, recruiting and any other expenses approved by the authority in amounts not to exceed the amount authorized in Section 57-75-15(3)(t);

(ii) To supervise the use of all such grant funds so reimbursed.

(mm) In connection with projects defined in Section 57-75-5(f)(xxii) or a facility related to such a project:

(i) To provide grant funds to reimburse public agencies or an enterprise owning or operating a project as defined in Section 57-75-5(f)(xxii) for site preparation, real estate improvements, utilities, fire protection, wastewater, railroads, roads, infrastructure, job training, recruiting and any other expenses approved by the authority in amounts not to exceed the amount authorized in Section 57-75-15(3)(u); and

(ii) To supervise the use of all such grant funds so reimbursed.

(nn) It is the policy of the authority and the authority is authorized to accommodate and support any enterprise owning or operating a project defined in Section 57-75-5(f)(xviii), 57-75-5(f)(xxi), 57-75-5(f)(xxii), 57-75-5(f)(xxvi) or 57-75-5(f)(xxvii) or an enterprise developing or owning a project defined in Section 57-75-5(f)(xx), that wishes to have a program of diversity in contracting, and/or that wishes to do business with or cause its prime contractor to do business with Mississippi companies, including those companies that are

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

small business concerns owned and controlled by socially and economically disadvantaged individuals. The term "socially and economically disadvantaged individuals" shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this paragraph.

(oo) To provide grant funds to an enterprise developing or owning a project defined in Section 57-75-5(f)(xx) for reimbursement of costs incurred by such enterprise for infrastructure improvements in the initial phase of development of the project, upon dedication of such improvements to the appropriate public agency.

(pp) In connection with projects defined in Section 57-75-5(f)(xxiii):

(i) To provide grant funds to reimburse public agencies or an enterprise operating a project as defined in Section 57-75-5(f)(xxiii) for site preparation, utilities, real estate improvements, infrastructure, roads, public works, job training and any other expenses approved by the authority in amounts not to exceed the amount authorized in Section 57-75-15(3)(v); and

(ii) To supervise the use of all such grant funds so reimbursed.

(qq) (i) To provide grant funds for the expansion of a publicly owned building for the project defined in Section 57-75-5(f)(xxiv) or loans to an enterprise owning, leasing or operating a project defined in Section 57-75-5(f)(xxiv) for the purchase and/or relocation of equipment, or for any other purpose related to the project as approved by the authority; however, the aggregate amount of any such loans under this paragraph (qq) shall not exceed Six Million Dollars (\$6,000,000.00) and the aggregate

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

amount of any such grants under this paragraph (qq) shall not exceed Seven Million Dollars (\$7,000,000.00);

(ii) To supervise the use of all such grant funds or loans; and

(iii) Notwithstanding any provision of this act to the contrary, such loans shall be for a term not to exceed ten (10) years as may be determined by the authority, shall bear a rate of interest to be determined by the authority, and shall be secured in an amount and a manner as may be determined by the authority.

(rr) (i) To provide grant funds to an enterprise owning or operating a project defined in Section 57-75-5(f) (xxv) for reimbursement of costs incurred by the enterprise in reconfiguring the manufacturing plant and for the purchase of equipment, or for any other purpose related to the project as approved by the authority;

(ii) To supervise the use of all such grant funds.

(ss) In connection with projects defined under Section 57-75-5(f) (xxvi):

(i) To provide grant funds and/or loans to a public agency in an amount not to exceed Fifteen Million Dollars (\$15,000,000.00) for the construction of a publicly owned building to be leased by the enterprise owning or operating the project;

(ii) To provide loan guarantees in an amount not to exceed the total cost of the project for which financing is sought or Twenty Million Dollars (\$20,000,000.00), whichever is less, for the purpose of encouraging the extension of conventional financing and the issuance of letters of credit to the enterprise owning or operating the project;

(iii) In connection with any loan guarantee made pursuant to this paragraph, to make payments to lenders providing financing to the enterprise owning or operating the project and the enterprise shall be obligated to repay the amount of the

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

payment plus any expenses incurred by the state as a result of the issuance of bonds pursuant to Section 57-75-15(3)(y);

(iv) To supervise the use of all such grant funds, loan funds or payments; and

(v) To require the enterprise owning or operating the project to provide security for the repayment obligation for any loan guarantee authorized under this paragraph in an amount and in a manner as may be determined by the authority.

(tt) In connection with projects defined under Section 57-75-5(f)(xxvii):

(i) To provide loans to a public agency in an amount not to exceed Fifty Million Dollars (\$50,000,000.00) for the construction of a publicly owned building and acquisition of equipment to be leased by the enterprise owning or operating the project; and

(ii) To supervise the use of all such loan funds.

(uu) (i) In addition to any other requirements or conditions under this chapter, the authority shall require that any application for assistance regarding a project under this chapter include, at a minimum:

1. A two-year business plan (which shall include pro forma balance sheets, income statements and monthly cash flow statements);

2. Financial statements or tax returns for the three (3) years immediately prior to the application (if the project is a new company or enterprise, personal financial statements or tax returns will be required);

3. Credit reports on all persons or entities with a twenty percent (20%) or greater interest in the project;

4. Data supporting the expertise of the project's principals;

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1266

5. A cost-benefit analysis of the project performed by a state institution of higher learning or other entity selected by the authority; and

6. Any other information required by the authority.

(ii) The authority shall require that binding commitments be entered into requiring that:

1. The applicable minimum requirements of this chapter and such other requirements as the authority considers proper shall be met; and

2. If the agreed upon commitments are not met, all or a portion of the funds provided under this chapter as determined by the authority shall be repaid.

(iii) Where appropriate, in the discretion of the authority, the authority shall acquire a security interest in or other lien upon any applicable collateral.

(iv) The provisions of this paragraph (uu) shall not apply to a project defined in Section 57-75-5(f)(xxiii).

**SECTION 2.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

House Bill 1391

**Description:** Medicaid; develop and operate a data match system to verify assets of applicants and recipients.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Medicaid
- 2 03/05 (H) Title Suff Do Pass Comm Sub
- 3 03/09 (H) Committee Substitute Adopted
- 4 03/09 (H) Passed {Vote}
- 5 03/13 (H) Transmitted To Senate
- 6 03/15 (S) Referred To Public Health and Welfare;Business and Financial

Institutions

- 7 03/28 (S) DR - TSDP: PH To BF
- 8 04/03 (S) Title Suff Do Pass
- 9 04/09 (S) Passed {Vote}
- 10 04/10 (S) Transmitted To House
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/12 (H) Enrolled Bill Signed
- 13 04/19 Approved by Governor

**Code Section:** A 081-0005-0055

----- Additional Information -----

**House Committee:** Medicaid

**Senate Committee:** Public Health and Welfare, Business and Financial Institutions

**Principal Author:** Howell

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1391

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Howell

To: Medicaid

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1391

AN ACT TO CREATE NEW SECTION 43-13-116.1, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DIVISION OF MEDICAID TO DEVELOP AND OPERATE A DATA MATCH SYSTEM WITH FINANCIAL INSTITUTIONS TO VERIFY THE ASSETS OF CERTAIN APPLICANTS FOR AND RECIPIENTS OF MEDICAID ASSISTANCE; TO AMEND SECTION 81-5-55, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 43-13-116.1, Mississippi Code of 1972:

43-13-116.1. (1) For purposes of this section:

(a) "Financial institution" has the meaning given by Sections 81-3-1 and 81-12-3, and shall include, but not be limited to, credit unions, stock brokerages, public or private entities administering retirement, savings, annuities, life insurance and/or pension funds.

(b) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money-market account.

(2) In accordance with Section 1940 of the federal Social Security Act (42 USCS Section 1396w), the Division of Medicaid shall implement an asset verification program requiring each applicant for or recipient of Medicaid assistance on the basis of being aged, blind or disabled, to provide authorization by the applicant or recipient, their spouse, and by any other person whose resources are required by law to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance, for the division to obtain from any financial institution financial records and information held by any such

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financial institution with respect to the applicant, recipient, spouse or such other person, as applicable, that the division determines are needed to verify the financial resources of the applicant, recipient or such other person in connection with a determination or redetermination with respect to eligibility for, or the amount or extent of, Medicaid assistance. Each aged, blind or disabled Medicaid applicant or recipient, their spouse, and any other applicable person described in this section shall provide authorization (as specified by 42 USCS Section 1396w(c)) to the division to obtain from any financial institution, any financial record, whenever the division determines that the record is needed in connection with a determination or redetermination of eligibility for Medicaid assistance.

(3) (a) In connection with the asset verification program, the division is authorized to enter into agreements with financial institutions doing business in the state:

(i) To develop and operate a data match system, using automated data exchanges, in which the division will provide to the financial institution, on a quarterly or more frequent basis, the name, social security number or other taxpayer identification number, and any other necessary identifying information for each applicant for or recipient of Medicaid assistance and for each other person whose resources are required to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance; and

(ii) Provide for payment to the financial institution of the reasonable costs of the institution for conducting the data matches and for responding to other requests made under this section, in accordance with the cost reimbursement requirements of Section 1115(a) of the Federal Right to Financial Privacy Act, 12 USCS Section 3415, as amended.

(b) Any financial institution doing business in the State of Mississippi may enter into agreements with the division

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to engage in the data match system and also to disclose any accounts held by the institution on behalf of the persons so identified by the division and, if requested by the division, the account numbers, account balances, and all names and addresses and social security or other tax identification numbers on record for those accounts.

(4) When the operation of the data match system results in the location of an account of an applicant for or recipient of Medicaid assistance or a person whose resources are required to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance, the division may request and the financial institution may provide any additional financial records and information held by the financial institution as the division determines are needed to establish, continue, modify or terminate eligibility for Medicaid assistance.

(5) A financial institution:

(a) Shall have no liability for failing to disclose to any account holder or depositor that the name of the person has been received from the division or that the financial institution has furnished financial records or information pertaining to the account holder or depositor to the division under this section;

(b) Shall have no liability for any delays, errors or omissions in conducting the data matches or in responding to other requests for records or information made under this section, which delays, errors or omissions result from circumstances beyond the control of the institution or from any unintentional, bona fide error, including, but not limited to, clerical or computer malfunction or programming error; and

(c) Shall be absolutely immune from any civil or criminal liability to any person under any contract, common law, statute or regulation for the disclosure to the division, or to any authorized contractor or agents thereof, of any information, accounts, assets, financial records or information under this

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article, the agreements referred to in subsection (4) of this section, or in response to any notice or request issued by the division or by any authorized contractors or agents thereof, or for any action or omission taken or omitted in good faith to comply with the requirements of this article.

**SECTION 2.** Section 81-5-55, Mississippi Code of 1972, is amended as follows:

81-5-55. In no instance shall the name of any depositor, or the amount of his deposit, be disclosed to anyone, except to report to approved parties, such as credit bureaus, account verification services and others, the forcible closure of a deposit account due to misuse, such as fraud, kiting or chronic bad check writing or when required to be done in legal proceedings, for verification of public assistance in cases in which \* \* \* the Department of Human Services or the Division of Medicaid certifies that it has on file an effective written authorization from the depositor authorizing the disclosure of that information, for verification of the financial exploitation of a vulnerable person in cases in which the Attorney General submits a written authorization, or in case of insolvency of banks. The parties referred to in this section must be approved by the Commissioner of Banking and Consumer Finance and must satisfactorily demonstrate their reliability and credibility of their activities. Disclosure of depositor information to any affiliate or agent providing services on behalf of the bank shall not be considered disclosure of depositor information within the meaning of this section. The term "affiliate" means a corporation or business entity that controls, is controlled by or is under common control with the bank. The term "agent" means anyone who has an agreement, arrangement or understanding to transact business for the bank by the authority and on account of the bank, provided that the agreement binds the agent to the same degree of confidentiality of disclosure of bank records as the bank. Any



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violation of this provision shall be considered a misdemeanor and, upon conviction thereof, in any court of competent jurisdiction, the person shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisoned in the county jail not more than six (6) months or both, and in addition thereto, shall be liable upon his bond to any person damaged thereby.

This section shall not be construed to prohibit the disclosure to the State Treasurer, State Auditor, Legislative Budget Office, Joint Legislative Committee on Performance Evaluation and Expenditure Review or the Department of Finance and Administration, of any information about any type of account or investment, including certificates of deposit, owned by any public entity of the State of Mississippi. In addition, this section shall not be construed to prohibit, or to impose liability for, the disclosure of information to the Department of Human Services, the Child Support Unit of the Department of Human Services, the Division of Medicaid, or their contractors or agents, pursuant to Chapter 13 or Chapter 19 of Title 43, Mississippi Code of 1972.

**SECTION 3.** Not later than December 31, 2013, the Division of Medicaid shall report to the Legislature the financial institution participation rate in the data match system established under this act, the amount of the savings achieved by the division through the asset verification program established under this act, and all expenditures by the division in relation to the program, including reimbursement to financial institutions and payments to vendors, contractors and consultants associated with the program.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.

**Mississippi Legislature  
2012 Regular Session  
House Bill 1410**

**Description:** Uniform mitigation standards; enact for insurance for homeowners.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Insurance
- 2 02/29 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Committee Substitute Adopted
- 4 03/13 (H) Passed {Vote}
- 5 03/15 (H) Transmitted To Senate
- 6 03/19 (S) Referred To Insurance; Accountability, Efficiency, Transparency
- 7 03/21 (S) DR - TSDPAA: IN To AC
- 8 04/02 (S) Title Suff Do Pass As Amended
- 9 04/04 (S) Amended
- 10 04/04 (S) Passed As Amended {Vote}
- 11 04/05 (S) Returned For Concurrence
- 12 04/09 (H) Concurred in Amend From Senate {Vote}
- 13 04/12 (S) Enrolled Bill Signed
- 14 04/12 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 1410

**----- Additional Information -----**

**House Committee:** Insurance

**Senate Committee:** Insurance, Accountability, Efficiency, Transparency

**2012 GENERAL LAWS OF MISSISSIPPI, HB 1410**

*Principal Author:* DeLano

*Additional Authors:* Bennett, Eure, Haney, Crawford, Baria

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1410

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives DeLano, Bennett, Eure, To: Insurance  
Haney, Crawford, Baria

HOUSE BILL NO. 1410  
(As Sent to Governor)

AN ACT TO PROVIDE AN INSURANCE PREMIUM DISCOUNT OR INSURANCE RATE REDUCTION FOR HOMEOWNERS WHO BUILD, REBUILD OR RETROFIT AN INSURABLE PROPERTY TO BETTER RESIST HURRICANE OR OTHER CATASTROPHIC WINDSTORM EVENTS; TO REQUIRE CERTIFICATION OF PROPERTIES TO OBTAIN AN ADJUSTMENT; TO REQUIRE RECORD KEEPING; TO REQUIRE THE SUBMISSION OF ACTUARIALLY JUSTIFIED RATING PLANS; TO DEFINE INSURABLE PROPERTY; TO PROVIDE FOR THE APPLICATION OF THIS ACT; TO AUTHORIZE THE PROMULGATION OF RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) Not later than July 1, 2013, insurance companies shall provide a premium discount or insurance rate reduction in an amount and manner as established in subsection (4) of this section and according to Section 3 of this act. In addition, insurance companies may also offer additional adjustments in deductible, other credit rate differentials, or a combination thereof, collectively referred to as adjustments. These adjustments shall be available under the terms specified in this section to any owner who builds or locates a new insurable property in Harrison, Hancock, Jackson, Stone and Pearl River Counties, to resist loss due to hurricane or other catastrophic windstorm events.

(2) To obtain the adjustment provided in this section, an insurable property located in this state shall be certified as constructed (a) in accordance with the 2006 or newer version of the International Residential Code, as amended, including the entire coastal construction supplement as recommended by the Mississippi Windstorm Mitigation Coordination Council; or (b) the Fortified for Safer Living or similar programs adopted by the Institute for Business and Home Safety; or (c) any other

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1410

mitigation program recommended by the Mississippi Windstorm Mitigation Coordination Council and approved by the Commissioner of Insurance. An insurable property shall be certified as conforming to the applicable building codes only after an evaluation of the insurable property has been satisfactorily completed by a building official or a certified and licensed building evaluator. An insurable property shall be certified as conforming to Fortified for Safer Living criteria only after evaluation and certification by an Institute for Business and Home Safety certified evaluator.

(3) An owner of insurable property claiming an adjustment under this section shall maintain sufficient certification records and construction records including, but not limited to, a Certificate of Occupancy denoting compliance with the applicable building code in subsection (2)(a) of this section or valid certification from the Institute for Business and Home Safety for compliance with the program described in subsection (2)(b) of this section.

(4) Insurers required to submit rates and rating plans to the commissioner shall submit an actuarially justified rating plan for any person who builds an insurable property to comply with the sets of requirements of subsection (2) of this section. An insurer is not required to provide the same amount of adjustment for a building code insurable property as the insurer would to a Fortified for Safer Living insurable property. An adjustment shall only apply to policies that provide wind coverage and may apply to that portion of the premium for wind coverage or to the total premium if the insurer does not separate out its premium for wind coverage in its rate filing. The adjustment shall apply exclusively to the premium designated for the improved insurable property. In addition to the requirements of this section, an insurer may voluntarily offer any other mitigation adjustment that the insurer deems appropriate.



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1410

**SECTION 2.** (1) Not later than July 1, 2013, insurance companies shall provide a premium discount or insurance rate reduction in an amount and manner as established in subsection (4) of this section and according to Section 3 of this act. In addition, insurance companies may also offer additional adjustments in deductible, other credit rate differentials, or a combination thereof, collectively referred to as adjustments. These adjustments shall be available under the terms specified in this section to any owner who retrofits his or her insurable property in Harrison, Hancock, Jackson, Stone and Pearl River Counties to resist loss due to hurricane or other catastrophic windstorm events.

(2) To obtain the adjustment provided in this section, an insurable property shall be retrofitted to one of the tiered mitigation levels as defined in the Fortified for Safer Homes requirements as may from time to time be adopted by the Institute for Business and Home Safety, or other mitigation program, or other construction technique, or standardized code that is recommended by the Mississippi Windstorm Mitigation Coordination Council and approved by the Commissioner of Insurance. Zone three HUD code manufactured homes installed to specifications and regulations promulgated by the Commissioner of Insurance shall be considered. An insurable property shall be certified as conforming to Fortified for Safer Homes requirements only after evaluation and certification by an Institute for Business and Home Safety certified evaluator. Certification of conformity of an insurable property with the other mitigation program, other construction technique, or other standardized code shall be made only by a building official or other certified or licensed building evaluator.

(3) An owner of insurable property claiming an adjustment under this section shall maintain sufficient certification records and construction records including, but not limited to, a

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1410

certification of compliance with an approved mitigation program as promulgated by the Mississippi Windstorm Mitigation Coordination Council and approved by the Commissioner of Insurance or valid certification from the Institute for Business and Home Safety for compliance with a program described in subsection (2) of this section.

(4) Insurers required to submit rates and rating plans to the commissioner shall submit actuarially justified rating plans for any person who retrofits an insurable property to comply with the sets of alternatives provided in subsection (2) of this section. The adjustment shall only apply to policies that provide wind coverage and may apply to that portion of the premium for wind coverage or to the total premium if the insurer does not separate out its premium for wind coverage in its rate filing. The adjustment shall apply exclusively to the premium designated for the improved insurable property. In addition to the requirements of this section, an insurer may voluntarily offer any other mitigation adjustment that the insurer deems appropriate.

**SECTION 3.** For the purposes of this act, the term "insurable property" includes single-family residential property. "Insurable property" also includes modular homes satisfying the codes, standards, or techniques as provided in Section 1 or 2 of this act. Manufactured homes or mobile homes are excluded from "insurable property," except as expressly provided in Section 2(2) of this act.

**SECTION 4.** The Commissioner of Insurance shall promulgate such rules and regulations as are necessary to implement and administer this act.

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 1452

**Description:** State agencies; required annual report not printed but made available on agency's official website.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To S.C. Accountblty/Efficiency/Transparency
- 2 02/29 (H) Title Suff Do Pass Comm Sub
- 3 03/08 (H) Committee Substitute Adopted
- 4 03/08 (H) Passed *[Vote]*
- 5 03/09 (H) Transmitted To Senate
- 6 03/19 (S) Referred To Accountability, Efficiency, Transparency
- 7 03/29 (S) Title Suff Do Pass
- 8 04/05 (S) Passed *[Vote]*
- 9 04/09 (S) Transmitted To House
- 10 04/11 (H) Enrolled Bill Signed
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/18 Approved by Governor

**Code Section:** A 027-0101-0001, A 027-0101-0003, A 027-0101-0005, A 025-0051-0001, A 025-0051-0003, A 025-0051-0005, A 025-0051-0007

----- Additional Information -----

**House Committee:** S.C. Accountblty/Efficiency/Transparency

**Senate Committee:** Accountability, Efficiency, Transparency

**Principal Author:** Gunn

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1452

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Gunn

To: S.C.  
Accountblty/Efficiency/Transp  
agency

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1452

AN ACT TO AMEND SECTIONS 27-101-1 AND 27-101-3, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT THE ANNUAL REPORT REQUIRED TO BE PREPARED BY EACH BOARD, AGENCY, COMMISSION AND DEPARTMENT OF GOVERNMENT, AND BY EACH EDUCATIONAL, ELEEMOSYNARY AND OTHER INSTITUTION OF THE STATE SUPPORTED IN WHOLE OR PART BY THE STATE, SHALL BE PUBLISHED ELECTRONICALLY ON THE OFFICIAL INTERNET WEBSITE OF THE RESPECTIVE ENTITY; TO AMEND SECTION 21-101-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DEPARTMENT OF FINANCE AND ADMINISTRATION MAY AUTHORIZE THE NONELECTRONIC PUBLICATION OF A LIMITED NUMBER OF COPIES OF SUCH ANNUAL REPORTS IN MERITORIOUS CASES; TO AMEND SECTION 25-51-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE ELECTRONIC FORM OF EACH AGENCY PUBLICATION SHALL CONSTITUTE THE PUBLIC RECORD OF THAT AGENCY, FOR PURPOSES OF THE MISSISSIPPI LIBRARY COMMISSION BEING THE STATE DEPOSITORY FOR PUBLIC RECORDS OF ANY GOVERNMENT AGENCY; TO AMEND SECTIONS 25-51-3 THROUGH 25-51-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 27-101-1, Mississippi Code of 1972, is amended as follows:

27-101-1. (1) Each and every educational, eleemosynary and other institution of the State of Mississippi supported, in whole or in part, by the state, and each and every board, agency, commission and department of government, except the Departments of Insurance and of Education \* \* \*, shall prepare, on or before December 31 of each year, a detailed report covering the annual period ending the preceding June 30. The Insurance Department shall prepare, on or before December 31 of each year, a like report covering the annual period ending the preceding March 1. The Department of Education shall prepare, on or before December 31 of each year, a like report covering the preceding school year.

(2) Each agency, board, commission, department and institution required by this section to prepare an annual report



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1452

also shall prepare an executive summary of the report that is not more than three (3) pages long.

**SECTION 2.** Section 27-101-3, Mississippi Code of 1972, is amended as follows:

27-101-3. \* \* \* Each annual report required by Section 27-101-1 shall be published electronically on the official website of the respective institution, board, agency, commission or department. One (1) copy of each annual report and the executive summary of the report shall be electronically transmitted to the State Librarian, the Governor, the Lieutenant Governor, \* \* \* the Speaker of the House of Representatives \* \* \*, and each state elected and appointed official. Each person to whom an annual report is electronically transmitted may receive the information necessary to obtain the applicable annual report in electronic form, including instructions on how to print the report, upon request to the agency, board, commission, department or institution that prepared the report.

**SECTION 3.** Section 27-101-5, Mississippi Code of 1972, is amended as follows:

27-101-5. The Department of Finance and Administration may authorize the nonelectronic publication of a limited number of copies of the annual or other reports in meritorious cases.

**SECTION 4.** Section 25-51-1, Mississippi Code of 1972, is amended as follows:

25-51-1. The Mississippi Library Commission, hereinafter referred to as the "commission," shall be the state depository for the public records issued by any government agency for public distribution, including the annual report required under Section 27-101-1. Each agency publication shall be made available in an electronic form, and the electronic form shall constitute the public record. The record shall be placed on the official website of the commission. The libraries of state agencies, public junior colleges, colleges, public universities and public libraries



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1452

located in the state may also become depositories of state agency publications that are available on the commission's official website, when designated as such by the director of the \* \* \* commission upon the written request of the applicable government agency.

**SECTION 5.** Section 25-51-3, Mississippi Code of 1972, is amended as follows:

25-51-3. Each agency of state government shall furnish to the director of the \* \* \* commission the necessary information to provide its publications and public records in an electronic form for placement on the official website of the commission. The director of the \* \* \* commission shall transmit this information to each depository \* \* \*. These records shall be made accessible by the depository receiving them to any person desiring to examine the same.

**SECTION 6.** Section 25-51-5, Mississippi Code of 1972, is amended as follows:

25-51-5. Each agency of state government shall furnish annually to the director of the \* \* \* commission \* \* \* a list of all its publications made available for public distribution \* \* \*.

**SECTION 7.** Section 25-51-7, Mississippi Code of 1972, is amended as follows:

25-51-7. A recorder of documents shall be appointed by the director of the \* \* \* commission in his office, whose functions shall be to administer the provisions of Sections 25-51-1 through 25-51-5, under the supervision of the director of the \* \* \* commission.

**SECTION 8.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 1460

**Description:** Bank; self-assessment reports are privileged and not admissible in civil or administrative proceedings.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Banking and Financial Services
- 2 02/28 (H) Title Suff Do Pass Comm Sub
- 3 03/08 (H) Committee Substitute Adopted
- 4 03/13 (H) Passed (Vote)
- 5 03/13 (H) Motion to Reconsider Entered (Blackmon, Zuber, Carpenter)
- 6 03/15 (H) Motion to Reconsider Tabled
- 7 03/19 (H) Transmitted To Senate
- 8 03/22 (S) Referred To Business and Financial Institutions
- 9 04/03 (S) Title Suff Do Pass
- 10 04/09 (S) Passed (Vote)
- 11 04/10 (S) Transmitted To House
- 12 04/12 (S) Enrolled Bill Signed
- 13 04/12 (H) Enrolled Bill Signed
- 14 04/19 Approved by Governor

---- Additional Information ----

**House Committee:** Banking and Financial Services

**Senate Committee:** Business and Financial Institutions

**Principal Author:** Zuber

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1460

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Zuber

To: Banking and Financial  
Services

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1460

AN ACT TO PROVIDE THAT SELF-ASSESSMENT REPORTS OF DEPOSITORY FINANCIAL INSTITUTIONS ARE PRIVILEGED AND NOT ADMISSIBLE IN ANY LEGAL OR INVESTIGATIVE ACTION IN ANY CIVIL OR ADMINISTRATIVE PROCEEDING, AND ARE NOT SUBJECT TO ANY DISCOVERY PURSUANT TO THE RULES OF CIVIL PROCEDURE OR ADMINISTRATIVE PROCEDURE; TO PROVIDE EXCEPTIONS TO THE SELF-ASSESSMENT PRIVILEGE; TO PROVIDE THAT ALL REPORTS THAT ARE PROTECTED BY THE SELF-ASSESSMENT PRIVILEGE SHALL BE EXEMPT FROM THE PUBLIC RECORDS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1. Definitions.** For purposes of this act, the following words and phrases shall have the meanings ascribed herein, unless the context requires otherwise:

(a) "Bank" shall have the same definition as set forth in Section 81-3-1 and shall include the bank holding company, affiliates, and subsidiaries of a bank.

(b) "Self-assessment" means a voluntary, self-initiated internal assessment, audit or review of a bank, its practices, policies and procedures or the bank's review of a facility or activity at a facility acting under contract as the bank's service provider, including, but not limited to, mortgage servicers and sub-servicers, credit and debit card processors, and providers of loan document systems.

(c) "Self-assessment report" means any document, including any audit, report, finding, communication or opinion or any draft of an audit, report, finding, communication or opinion, prepared by internal personnel or by outside attorneys, accountants or consultants as a part of or in connection with a self-assessment that is made in good faith, and which report is not published outside the bank unless publication is made to bank

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1460

regulators or to third parties acting pursuant to an agreement to preserve its confidentiality. Such agreement to preserve confidentiality need not be in writing and may be evidenced by an indication of confidentiality on the face of any such self-assessment report, or by a verbal agreement regarding its confidentiality.

(d) "Bank regulators" means any state, federal or municipal governmental agency, bureau, commission, office or other governmental entity charged with the regulation and/or supervision of a bank or regulation or supervision of any activity in which a bank may be engaged. The term shall include, but is not limited to, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Fair Trade Commission, and the Mississippi Department of Consumer Finance and Banking.

(e) "Banking law" means any federal, state or local statute, rule or regulation affecting or governing a bank or any activity in which a bank is or may be engaged, or any order, award, agreement, release, permit, license, standard or notice or issued by a federal, state or local court, agency, or governmental authority in pursuance thereof.

**SECTION 2. Discovery and admissibility in evidence of self-evaluation reports of depository financial institutions; divulgence or dissemination of information in reports; exemption from Public Records Act.** (1) A self-assessment report is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding and is not subject to any discovery under the rules of civil procedure or administrative procedure, unless:

(a) The bank, irrespective of whether the self-assessment was conducted and/or prepared by a private contractor hired by the bank, expressly waives the protections of this section; or

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(b) The court of record or hearing officer, who shall be neutral and independent, after an in camera review, determines that:

(i) The self-assessment report shows that the bank is not or was not in substantial compliance with a material provision of banking law, and

(ii) The bank did not initiate good-faith efforts to achieve substantial compliance with a material provision of banking law within a reasonable time after the noncompliance was discovered, and

(iii) The bank's failure to comply caused material harm to a bank customer or consumer.

(iv) For purposes of subparagraphs (i) and (ii) of this paragraph (b) only, if the evidence shows noncompliance by the bank, the bank may demonstrate that appropriate efforts to achieve compliance were or are being taken by establishing a phased schedule of actions to be taken to bring the bank into compliance, and those efforts shall protect the bank's self-assessment report(s) from disclosure.

(c) The court of record or a hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the self-assessment report was prepared to avoid disclosure of information in an investigative, administrative or judicial proceeding that was underway at the time of its preparation, or for which the bank had been provided written notification that an investigation into a specific violation had been initiated, or it is found that a condition exists that demonstrates imminent and substantial harm to bank customers or consumers.

(2) The self-evaluation privilege does not apply to:

(a) Information in the possession of a regulatory agency obtained through observation, sampling, examination or



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1460

otherwise and which is subject to public disclosure under the Mississippi Public Records Act of 1983; or

(b) Information obtained through any source independent of the self-assessment report and which was not protected by a confidentiality agreement; or

(c) Evidence existing before the commencement of and independent of the voluntary self-assessment, which is not protected by a confidentiality agreement and is not related to a request for compliance assistance from bank regulators.

(3) (a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-assessment privilege under subsection (1) of this section is applicable to a self-assessment report or that privilege does not apply to a self-assessment report under the provisions of subsection (2) of this section, then a court record or hearing officer, who shall be neutral and independent, may allow that party limited access to the self-assessment report for the purposes of an in-camera review only. The court of record or the hearing officer may grant limited access to all or part of the self-assessment under the provisions of this subsection (3) upon such conditions as may be necessary to protect the confidentiality of the self-assessment report. A moving party who obtains access to a self-assessment report under the provisions of this subsection (3) may not divulge any information from the report except as specifically allowed by the court or hearing officer.

(b) If any party divulges all or any part of the information contained in a self-assessment report in violation of the provisions of paragraph (a) of this subsection (3) or if any other person knowingly divulges or disseminates all or any part of the information contained in a self-assessment report that was provided to the person in violation of the provisions of paragraph (a) of this subsection (3), the party or other person is liable for any damages caused by the divulgence or dissemination of the

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1460

information that are incurred by the bank. The court or hearing officer may issue such contempt orders and sanctions against the offending party or such party's legal counsel as may be necessary to ensure compliance.

(4) Nothing in this section limits, waives or abrogates the scope or nature of any statutory or common law privilege.

(5) A bank asserting a self-assessment privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of a self-assessment report has the burden of proving that such a privilege does not exist under this section.

(6) All self-assessment reports that are protected by the self-assessment privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 1490

**Description:** Pharmacy Audit Integrity Act; revise certain provisions of.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No







*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (H) Referred To Public Health and Human Services
- 2 03/01 (H) Title Suff Do Pass Comm Sub
- 3 03/13 (H) Failed to Suspend Rules {Vote}
- 4 03/13 (H) Read the Third Time
- 5 03/14 (H) Committee Substitute Adopted
- 6 03/14 (H) Passed {Vote}
- 7 03/14 (H) Motion to Reconsider Entered (Baria, Mims, Barker)
- 8 03/15 (H) Motion to Reconsider Tabled
- 9 03/19 (H) Transmitted To Senate
- 10 03/20 (S) Referred To Public Health and Welfare
- 11 04/03 (S) Title Suff Do Pass As Amended
- 12 04/05 (S) Amended
- 13 04/05 (S) Passed As Amended {Vote}
- 14 04/10 (S) Returned For Concurrence
- 15 04/13 (H) Concurred in Amend From Senate {Vote}
- 16 04/18 (S) Enrolled Bill Signed
- 17 04/18 (H) Enrolled Bill Signed
- 18 04/24 Approved by Governor

**Amendments:**

-   [S] Committee Amendment No 1 **Adopted** Voice Vote
-   [S] Amendment No 1 to Committee Amendment No 1 **Adopted** Voice Vote
-   Amendment Report for House Bill No. 1490

**Code Section:** A 073-0021-0179, A 073-0021-0183

2012 GENERAL LAWS OF MISSISSIPPI, HB 1490

----- Additional Information -----

*House Committee:* Public Health and Human Services

*Senate Committee:* Public Health and Welfare

*Principal Author:* Hamilton

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1490

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Hamilton

To: Public Health and Human  
Services

HOUSE BILL NO. 1490  
(As Sent to Governor)

AN ACT TO AMEND SECTIONS 73-21-179 AND 73-21-183, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE PROCEDURES FOR CONDUCTING AN AUDIT UNDER THE PHARMACY AUDIT INTEGRITY ACT; TO REMOVE CERTAIN EXCLUSIONS FROM THE DEFINITIONS OF "HEALTH INSURANCE PLAN" AND "PHARMACY BENEFIT MANAGEMENT PLAN" FOR THE PURPOSES OF THE PHARMACY AUDIT INTEGRITY ACT; TO CODIFY NEW SECTION 73-21-191, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MONETARY PENALTIES TO BE IMPOSED ON PHARMACY BENEFIT MANAGERS FOR NONCOMPLIANCE WITH THE PHARMACY AUDIT INTEGRITY ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-21-179, Mississippi Code of 1972, is amended as follows:

73-21-179. For purposes of Sections 73-21-175 through 73-21-189:

(a) "Entity" means a pharmacy benefit manager, a managed care company, a health plan sponsor, an insurance company, a third-party payor, or any company, group or agent that represents or is engaged by those entities.

(b) "Health insurance plan" means benefits consisting of prescription drugs, other products and supplies, and pharmacist services provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as prescription drugs, other products and supplies, and pharmacist services under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer \* \* \*.



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(c) "Individual prescription" means the original prescription for a drug signed by the prescriber, and excludes refills referenced on the prescription.

(d) "Pharmacy benefit manager" means a business that administers the prescription drug/device portion of pharmacy benefit management plans or health insurance plans on behalf of plan sponsors, insurance companies, unions and health maintenance organizations. Pharmacy benefit managers may also provide some, all, but may not be limited to, the following services either directly or through outsourcing or contracts with other entities:

(i) Adjudicate drug claims or any portion of the transaction.

(ii) Contract with retail and mail pharmacy networks.

(iii) Establish payment levels for pharmacies.

(iv) Develop formulary or drug list of covered therapies.

(v) Provide benefit design consultation.

(vi) Manage cost and utilization trends.

(vii) Contract for manufacturer rebates.

(viii) Provide fee-based clinical services to improve member care.

(ix) Third-party administration.

(e) "Pharmacy benefit management plan" means an arrangement for the delivery of pharmacist's services in which a pharmacy benefit manager undertakes to administer the payment or reimbursement of any of the costs of pharmacist's services for an enrollee on a prepaid or insured basis that (i) contains one or more incentive arrangements intended to influence the cost or level of pharmacist's services between the plan sponsor and one or more pharmacies with respect to the delivery of pharmacist's services; and (ii) requires or creates benefit payment

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differential incentives for enrollees to use under contract with the pharmacy benefit manager. \* \* \*

(f) "Pharmacist," "pharmacist services" and "pharmacy" or "pharmacies" shall have the same definitions as provided in Section 73-21-73.

**SECTION 2.** Section 73-21-183, Mississippi Code of 1972, is amended as follows:

73-21-183. (1) The entity conducting an audit shall follow these procedures:

(a) The pharmacy contract must identify and describe in detail the audit procedures;

(b) The entity conducting the on-site audit must give the pharmacy written notice at least two (2) weeks before conducting the initial on-site audit for each audit cycle, and the pharmacy shall have at least fourteen (14) days to respond to any desk audit requirements;

(c) The entity conducting the on-site or desk audit shall not interfere with the delivery of pharmacist services to a patient and shall utilize every effort to minimize inconvenience and disruption to pharmacy operations during the audit process;

(d) Any audit that involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;

(e) Any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record shall not \* \* \* constitute fraud; however, those claims may be subject to recoupment. No such claim shall be subject to criminal penalties without proof of intent to commit fraud;

(f) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy

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record with respect to orders or refills of a legend or narcotic drug;

(g) A finding of an overpayment or an underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs, except that recoupment shall be based on the actual overpayment or underpayment;

(h) A finding of an overpayment shall not include the dispensing fee amount unless a prescription was not dispensed;

(i) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(j) The period covered by an audit may not exceed two (2) years from the date the claim was submitted to or adjudicated by a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payor, pharmacy benefit manager, a health program administered by a department of the state or any entity that represents those companies, groups, or department; \* \* \*

(k) An audit may not be initiated or scheduled during the first five (5) calendar days of any month due to the high volume of prescriptions filled in the pharmacy during that time unless otherwise consented to by the pharmacy;

(l) Any prescription that complies with state law and rule requirements may be used to validate claims in connection with prescriptions, refills or changes in prescriptions;

(m) An exit interview that provides a pharmacy with an opportunity to respond to questions and comment on and clarify findings must be conducted at the end of an audit. The time of the interview must be agreed to by the pharmacy;

(n) Unless superseded by state or federal law, auditors shall only have access to previous audit reports on a particular pharmacy conducted by the auditing entity for the same pharmacy

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benefits manager, health plan or insurer. An auditing vendor contracting with multiple pharmacy benefits managers or health insurance plans shall not use audit reports or other information gained from an audit on a particular pharmacy to conduct another audit for a different pharmacy benefits manager or health insurance plan;

(o) The parameters of an audit must comply with consumer-oriented parameters based on manufacturer listings or recommendations for the following:

(i) The day supply for eyedrops must be calculated so that the consumer pays only one (1) thirty-day copayment if the bottle of eyedrops is intended by the manufacturer to be a thirty-day supply;

(ii) The day supply for insulin must be calculated so that the highest dose prescribed is used to determine the day supply and consumer copayment;

(iii) The day supply for a topical product must be determined by the judgment of the pharmacist based upon the treated area;

(p) (i) Where an audit is for a specifically identified problem that has been disclosed to the pharmacy, the audit shall be limited to claims that are identified by prescription number;

(ii) For an audit other than described in subparagraph (i) of this paragraph (p), an audit shall be limited to one hundred (100) individual prescriptions that have been randomly selected;

(iii) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site;

(iv) Except for audits initiated under paragraph (i) of this subsection, an entity shall not initiate an audit of a pharmacy more than one (1) time in any quarter;

(r) A recoupment shall not be based on:



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(i) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the State Board of Pharmacy; or

(ii) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the State Board of Pharmacy;

(s) Except for Medicare claims, approval of drug, prescriber or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation of claim elements; and

(t) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

(2) The entity must provide the pharmacy with a written report of the audit and comply with the following requirements:

(a) The preliminary audit report must be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit, with a reasonable extension to be granted upon request;

(b) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during the audit, with a reasonable extension to be granted upon request;

(c) A final audit report shall be delivered to the pharmacy within one hundred eighty (180) days after receipt of the preliminary audit report or final appeal, as provided for in Section 73-21-185, whichever is later;

(d) The audit report must be signed by the auditor;

(e) Recoupments of any disputed funds, or repayment of funds to the entity by the pharmacy if permitted pursuant to contractual agreement, shall occur after final internal disposition of the audit, including the appeals process as set



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forth in Section 73-21-185. If the identified discrepancy for an individual audit exceeds Twenty-five Thousand Dollars (\$25,000.00), future payments in excess of that amount to the pharmacy may be withheld pending finalization of the audit;

(f) Interest shall not accrue during the audit period; and

(g) Each entity conducting an audit shall provide a copy of the final audit report, after completion of any review process, to the plan sponsor.

**SECTION 3.** The following provision shall be codified as Section 73-21-191, Mississippi Code of 1972:

73-21-191. (1) The State Board of Pharmacy may impose a monetary penalty on pharmacy benefit managers for noncompliance with the provisions of the Pharmacy Audit Integrity Act, Sections 73-21-175 through 73-21-189, in amounts of not less than One Thousand Dollars (\$1,000.00) per violation and not more than Twenty-five Thousand Dollars (\$25,000.00) per violation. The board shall prepare a record entered upon its minutes which states the basic facts upon which the monetary penalty was imposed. Any penalty collected under this subsection (1) shall be deposited into the special fund of the board.

(2) The board may assess a monetary penalty for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding if the board imposes a monetary penalty under subsection (1) of this section. A monetary penalty assessed and levied under this section shall be paid to the board by the licensee, registrant or permit holder upon the expiration of the period allowed for appeal of those penalties under Section 73-21-101, or may be paid sooner if the licensee, registrant or permit holder elects. Money collected by the board under this subsection (2) shall be deposited to the credit of the special fund of the board.

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(3) When payment of a monetary penalty assessed and levied by the board against a licensee, registrant or permit holder in accordance with this section is not paid by the licensee, registrant or permit holder when due under this section, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, registrant or permit holder, or if the licensee, registrant or permit holder is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi. When those proceedings are instituted, the board shall certify the record of its proceedings, together with all documents and evidence, to the chancery court and the matter shall be heard in due course by the court, which shall review the record and make its determination thereon in accordance with the provisions of Section 73-21-101. The hearing on the matter may, in the discretion of the chancellor, be tried in vacation.

(4) The board shall develop and implement a uniform penalty policy that sets the minimum and maximum penalty for any given violation of board regulations and laws governing the practice of pharmacy. The board shall adhere to its uniform penalty policy except in those cases where the board specifically finds, by majority vote, that a penalty in excess of, or less than, the uniform penalty is appropriate. That vote shall be reflected in the minutes of the board and shall not be imposed unless it appears as having been adopted by the board.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

House Bill 1519

**Description:** Income tax; certain corporate distributions tax free if they are part of a transaction that qualifies under Section 355, Internal Rev. Code.

**Background Information:**

*Disposition:* Law

*Deadline:* Revenue

*Revenue:* Yes

*Vote type required:* Three/Fifths

*Effective date:* January 1, 2012

**History of Actions:**

- 1 03/01 (H) Referred To Ways and Means
- 2 03/21 (H) Title Suff Do Pass
- 3 03/21 (H) Passed {Vote}
- 4 03/22 (H) Transmitted To Senate
- 5 03/26 (S) Referred To Finance
- 6 03/27 (S) Title Suff Do Pass As Amended
- 7 04/05 (S) Amended
- 8 04/05 (S) Passed As Amended {Vote}
- 9 04/10 (S) Returned For Concurrence
- 10 04/11 (H) Concurred in Amend From Senate {Vote}
- 11 04/17 (H) Enrolled Bill Signed
- 12 04/17 (S) Enrolled Bill Signed
- 13 04/23 Approved by Governor

**Amendments:**

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 1519

**Code Section:** A 027-0007-0009

----- Additional Information -----

**House Committee:** Ways and Means

**Senate Committee:** Finance

**2012 GENERAL LAWS OF MISSISSIPPI, HB 1519**

*Principal Author:* Smith (39th)

*Additional Authors:* Dixon

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 1519

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representatives Smith (39th), Dixon

To: Ways and Means

HOUSE BILL NO. 1519  
(As Sent to Governor)

AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT, WITH RESPECT TO A CORPORATION THAT IS MAKING CERTAIN DISTRIBUTIONS TO A STOCKHOLDER, NO GAIN SHALL BE RECOGNIZED FROM SUCH DISTRIBUTION PROVIDED THE DISTRIBUTION IS A PART OF A TRANSACTION THAT QUALIFIES FOR TAX-FREE TREATMENT UNDER THE PROVISIONS OF SECTION 355 OR 368 OF THE INTERNAL REVENUE CODE; TO PROVIDE THAT ADDITIONALLY, WITH RESPECT TO A DISTRIBUTING CORPORATION, NO GAIN SHALL BE RECOGNIZED FROM SUCH A DISTRIBUTION PROVIDED THE DISTRIBUTION IS PURSUANT TO AN OVERALL PLAN TO FACILITATE AN ULTIMATE DISTRIBUTION THAT QUALIFIES FOR TAX-FREE TREATMENT UNDER THE PROVISIONS OF SECTION 355 OR 368 OF THE INTERNAL REVENUE CODE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 27-7-9, Mississippi Code of 1972, is amended as follows:

27-7-9. (a) Except as provided in Sections 27-7-95 through 27-7-103, determination of amount of gain or loss.

(1) **Computation of gain or loss.** The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in subsection (c) for determining gain, and the loss shall be the excess of the adjusted basis provided in subsection (c) for determining loss over the amount realized.

(2) **Amount realized.** The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(3) **Installment sales.** Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of



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that portion of any installment payment representing gain or profit in the year in which such payment is received.

(b) **Recognition of gain or loss.** Except as otherwise provided in this section, on the sale or exchange of property the entire amount of the gain or loss, determined under subsection (a), shall be recognized.

(c) **Adjusted basis for determining gain or loss.**

(1) **In general.** The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (d) adjusted as provided in subsection (e).

(2) **Bargain sale to a charitable organization.** If a deduction is allowed under Section 27-7-17 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.

(d) **Basis of property.**

(1) **Property acquired after March 16, 1912.** The basis for ascertaining the gain derived or the loss sustained from the sale or other disposition of property, real, personal or mixed, shall be, in the case of property acquired after March 16, 1912, the cost of such property, except as otherwise provided in this subsection.

(2) **Inventory property.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(3) **Property acquired by gift.** In the case of property acquired by gift after January 1, 1936, the basis shall be the same as that which it would have in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee,

the commissioner shall, if possible, obtain such facts from such donor, or last preceding owner, or any other person cognizant thereof. If the commissioner finds it impossible to obtain such facts, the commissioner shall establish a basis for the property from the best information available. In the case of property acquired by gift on or before January 1, 1936, the basis for ascertaining gain or loss from the sale or other disposition thereof shall be the fair market price or value of such property at the time of acquisition.

(4) **Property acquired by bequests, devises and inheritance.** If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, the basis shall be the fair market value of the property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, the basis in the hands of the estate shall be the fair market value of the property at the time of the death of the decedent. In all other cases, if the property was acquired either by will or by intestacy, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death.

(5) **Property acquired by a transfer in trust.** If the property was acquired by a transfer in trust (other than by a transfer in trust by a bequest or devise), the basis shall be the same as it would be in the hands of the grantor, increased in the

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amount of gain, or decreased in the amount of loss, recognized to the grantor upon such transfer under this section.

(6) **Property acquired in tax-free exchanges.** If the property was acquired upon an exchange described in subsection (f), the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange by the terms of this act. If the property so acquired consisted in part of the type of property permitted by subsection (f) to be received without recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange.

(7) **Property acquired in tax-free distribution.** If the property consists of stock or securities distributed to a taxpayer in connection with a transaction described in subsection (f), the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the commissioner, between such stock and the stock or securities distributed.

(8) **Property acquired in involuntary conversions.** If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (f), the basis shall be the same as in the case of property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of said subsection determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion.

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(9) **Property acquired in wash sales.** If substantially identical property was acquired in place of stock or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under Section 27-7-17(d), the basis in the case of property so acquired shall be the basis in the case of the stock or securities so sold or disposed of, except that, if the repurchase price was in excess of the sales price, such basis shall be increased in the amount of the difference, or if the repurchase price was less than the sales price, such basis shall be decreased in the amount of the difference.

(10) **Property acquired before March 16, 1912.** The basis for determining the gain or loss from the sale or other disposition of property acquired before March 16, 1912, shall be:

(A) The cost of such property (or in the case of such property as is described in subsection (d)(2) or (4) of this section the basis as therein provided, or in the case of property acquired by gift or transfer in trust, the fair market value of such property at the time of such acquisition); or

(B) The fair market value of such property as of March 16, 1912, whichever is greater.

In determining the fair market value of stock in a corporation as of March 16, 1912, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(e) **Adjustments to basis.**

(1) **In general.** In computing the amount of gain or loss from the sale or other disposition of property, proper adjustment shall be made for any expenditure, receipt, loss or other item, properly chargeable to capital account since the basis date. The cost or other basis of the property shall also be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization and depletion, which have since the acquisition of the property been allowable in respect of



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such property whether or not such deductions were claimed by the taxpayer or formerly allowed. In the case of stock, the basis shall be diminished by the amount of distributions previously made in respect to such stock, to the extent provided under this section.

(2) **Substituted basis.** Whenever it appears that the basis of the property in the hands of a taxpayer is a substituted basis, then the adjustments provided in subsection (e)(1) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor or grantor, or during which the other property was held by the person for whom the basis is to be determined. The term "substituted basis" as used in this subsection means a basis determined under any provision of this section or under any corresponding provision of a prior Income Tax Law, providing that the basis shall be determined by reference to the basis in the hands of a transferor, donor or grantor, or, by reference to other property held at any time by the person for whom the basis is to be determined.

(f) **Recognition of gain or loss -- exceptions.**

(1) **Exchange solely in kind.**

(A) **Property held for productive use or investment.** No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidence of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment. In addition, no gain or loss shall be recognized on any exchange of property if no gain or loss is recognized with regard to such exchange under Section 1031 of the Internal Revenue Code.



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(B) **Stock for stock in same corporation.** No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(C) **Transfers to corporation controlled by transferor.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and if immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two (2) or more persons, this subsection shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(D) **Stock for stock on reorganization.** No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation, a party to a reorganization.

(2) **Gain from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (f)(1) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by subsection (f)(1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received.

(3) **Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (f)(1) of this section, if it were not for the fact that the property

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received in exchange consists not only of property permitted by subsection (f)(1) to be received without the recognition of gain or loss but also of other property or money, then no loss from the exchange shall be recognized.

(4) **Distribution of stock on reorganization.** If in pursuance of a plan of reorganization, there is distributed to a shareholder in a corporation, a party to the reorganization, stock or securities in such corporation or in another corporation, a party to the reorganization, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(5) **Distribution with effect of taxable dividend.** If a distribution made in pursuance of a plan of reorganization is within the provisions of subsection (f)(4) of this section, but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under subsection (f)(2) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation. The remainder, if any, of the gain recognized under subsection (f)(2) shall be taxed as a gain from the exchange of property.

(6) **Involuntary conversions.** If property, as a result of its destruction in whole or in part, theft, seizure or requisition or condemnation, or threat or imminence thereof, is compulsorily or involuntarily converted:

(A) Into property similar or related in service or use to the property so converted, no gain shall be recognized, but loss shall be recognized;

(B) Into money, no gain shall be recognized if such money is expended, within a period ending two (2) years after the close of the first taxable year in which any part of the gain upon the conversion is realized, in the acquisition of other

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property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, but loss shall be recognized. Such two-year period shall be extended to five (5) years with respect to property in the Hurricane Katrina disaster area, as defined in the Katrina Emergency Tax Relief Act of 2005, which is compulsorily or involuntarily converted on or after August 29, 2005, by reason of Hurricane Katrina, but only if substantially all of the use of the replacement property is in such area. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended, regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain. Provided, gain realized on property which is compulsorily or involuntarily converted for public use under Title 11, Chapter 27, Mississippi Code of 1972, or any federal law relating to the involuntary conversion of property for public use shall not be recognized. Provided further, that gain realized on property which is voluntarily converted for public use shall not be recognized after it becomes evident that eminent domain proceedings are probable.

Except as otherwise provided, the provisions of this subsection relating to the nonrecognition of gain, including the exception provided in subparagraph (B), shall apply only to an owner of the converted property who has held title to such property for a period at least three (3) years prior to the date of the disposition of the converted property, provided that an owner who acquired such property by bequest, devise, gift or inheritance shall be excluded from this limitation, if the preceding owner acquired title to such property at least three (3) years prior to the date of disposition. However, no gain shall be recognized on property that is compulsorily or involuntarily

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converted if no gain is recognized with regard to such property under Section 1033 of the Internal Revenue Code.

**(7) Property exchanged treated as equivalent of cash.**

When property other than property specified in subsection (f)(1)(A) of this section is exchanged for other property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash to the amount of its fair market value.

**(8) Distribution of assets of corporation.**

The distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly.

**(9) Organization of a corporation.**

In the case of the organization of a corporation, the stock and securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.

**(10) Sales of certain interests in financial**

**institutions domiciled in Mississippi, domestic corporations, domestic limited partnerships or domestic limited liability companies.** No gain shall be recognized from the sale of authorized shares in financial institutions domiciled in Mississippi and domestic corporations, or partnership interests in domestic limited partnerships and domestic limited liability companies, that have been held for more than one (1) year; however, any gain that would otherwise be excluded by this provision shall first be applied against, and reduced by, any losses determined from sales or transactions described by this provision if the losses were incurred in the year of the gain or within the two (2) years preceding or subsequent to the gain.

**(g) Reorganization defined.**

The term "reorganization"

means:

(1) A statutory merger or consolidation;



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(2) The acquisition by one (1) corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation, or of substantially all the properties of another corporation;

(3) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(4) A recapitalization; or

(5) A mere change in identity, form or place of organization, however effected.

(h) **Party to a reorganization defined.** The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one (1) corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(i) **Control defined.** As used in this section, the term "control" means the ownership of at least eighty percent (80%) of the voting stock and at least eighty percent (80%) of the total number of shares of all other classes of stock of the corporation.

(j) **Special rules.**

(1) **Liquidation of subsidiaries.** A transfer to a parent corporation from its subsidiary of property distributed in complete liquidation of the subsidiary shall result in no recognized gain or loss if the basis of the property in the hands of the parent corporation is the same as it was in the hands of the subsidiary.



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(2) **Gain or loss on sales or exchanges in connection with certain liquidations.** Corporations adopting a plan of complete liquidation under the provisions of the Internal Revenue Code shall recognize the gain or loss from the sale or exchange of property by the corporation under said plan. The total gain or loss from the liquidating distributions shall be recognized by the shareholders; however, a credit for the tax paid by the liquidating corporation on the gain from the sale or exchange of property under the plan of liquidation will be allowed to the extent of any tax liability to the shareholders. The corporation shall provide to the Department of Revenue a list of all shareholders with their percentage of ownership, distribution, tax credit allowed and any other information requested.

(3) **Distribution of stock and securities of a controlled corporation.** No gain shall be recognized on a distribution to a stockholder of a corporation if such gain would not be recognized to such stockholder for federal income tax purposes under the provisions of Section 355 of the \* \* \* Internal Revenue Code. With respect to the distributing corporation, no gain shall be recognized from such distribution provided the distribution is a part of a transaction that qualifies for tax-free treatment under the provisions of Section 355 or 368(a)(1)(D) of the Internal Revenue Code. Additionally, with respect to a distributing corporation, no gain shall be recognized from such distribution provided the distribution is pursuant to an overall plan to facilitate an ultimate distribution that qualifies for tax-free treatment under the provisions of Section 355 or 368(a)(1)(D) of the Internal Revenue Code.

(4) Notwithstanding the other provisions of this section, a corporation or other entity that is involved in restructuring, reorganizing, distributing assets or profits, or changing ownership that results in an adjustment to its asset basis is required to report a gain in the year such transaction

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occurs on any such transaction when the transaction involves assets owned or used in this state, or otherwise represents assets owned or used in this state. If a transfer of income or a change in asset valuation occurs on the tax records of the taxpayer, such transaction shall result in taxation to this state to the extent of the transfer of income or change in asset valuation.

(5) If a corporation or other entity makes an Internal Revenue Code Section 338 election, or other similar election under which the aggregate basis in assets are increased on the tax records of the taxpayer, then a similar election must also be made for Mississippi purposes, but the gain must be recognized by the corporation in which the increase in basis of the assets occurs. The corporation or other entity is allowed to increase its basis by the amount of gain recognized. An aggregate write-down of assets is not allowed. The parent corporation shall recognize the gain on the disposition of its stock.

(6) For state tax purposes, a corporation or other legal entity is considered separate from its shareholders, affiliated corporations or other entities. If a corporation or other legal entity enters into any transaction that is for the benefit of its shareholders or for the benefit of an affiliated corporation without an equal mutual business benefit of the corporation, then, the transaction will be adjusted or eliminated to arrive at taxable income to this state. All transactions entered into by a corporation must be at "arms-length." If requested by the commissioner, the taxpayer must be able to substantiate that the transaction occurred at "arms-length." If not, the transaction may be adjusted to the satisfaction of the commissioner. In determining whether the transaction occurred at arms-length, the commissioner shall consider the following:

(A) Whether the transaction is in compliance with the federal regulations promulgated under Internal Revenue Code Section 482;

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(B) Whether the transaction was done for a valid business purpose;

(C) Whether the income being shifted by the transaction is subject to a tax in another state;

(D) Whether the transaction is consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances; and

(E) Other factors which support the conclusion that income is being shifted to avoid the tax imposed by this chapter.

(k) **Sale or exchange of residence.**

(1) **Loss on sale or exchange of residence.** Loss from the sale or exchange of property used by the taxpayer as his principal residence is not recognized and cannot be deducted.

(2) **Nonrecognition of gain.** Gain shall be computed in accordance with the provisions of the Internal Revenue Code, rules, regulations and revenue procedures relating to the sale or exchange of a personal residence not in direct conflict with the provisions of the Mississippi Income Tax Law.

(3) **Gain on the sale or exchange of residence.** A recognizable gain on the sale or exchange of a personal residence shall be included in gross income and treated as ordinary income.

(l) **Distributions by corporations.**

(1) Distributions of the property of a corporation, including partial and complete liquidations, shall be recognized by the distributing corporation and the gain or loss shall be computed on the difference of the fair market value of the assets distributed and their basis. The total gain or loss from the distributions to the shareholders shall be recognized by the shareholders subject to subsections (f)(8) and (j)(1); however, a credit for the tax paid by the distributing corporation on the gain from the sale or exchange of property under the plan of

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distribution will be allowed to the extent of any liability to the shareholders. The corporation shall provide to the Department of Revenue a list of all shareholders with their percentage of ownership, distribution, tax credit allowed and any other information requested.

(2) **Source of distributions.** For the purposes of this act, every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings and profits. Any earnings or profit accumulated, or increase in value of property acquired, before March 16, 1912, may be distributed exempt from tax (after the earnings and profits accumulated after March 16, 1912, have been distributed), but any such tax-free distribution shall be applied against and reduce the basis of the stock provided in subsection (d).

(3) **Distributions in liquidation.** Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under subsection (a), but shall be recognized only to the extent provided in subsection (f). In the case of amounts distributed in partial liquidation, the part of such distribution which is property chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of paragraph (2) of this subsection for the purpose of determining the taxability of subsequent distributions by the corporations.

(4) **Other distributions.** If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders, is not out of increase in value of property accrued before March 16, 1912, and is not out of earnings or profits, then the amount of such distribution shall be applied against and reduce the basis of the stock provided in subsection (d), and if



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in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

(5) **Stock dividends.** A stock dividend shall not be subject to tax.

(6) **Cancellation or redemption of stock.** If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after March 16, 1912, shall be treated as a taxable dividend.

(7) **"Amounts distributed in partial liquidation" defined.** As used in this subsection, the term "amounts distributed in partial liquidation" means distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

(8) **Distributions of stock pursuant to order enforcing the Antitrust Laws.** Any distribution of stock which is made pursuant to the order of any court enforcing the Antitrust Laws of the United States, or of any state, shall be a distribution which is not out of earnings and profits of the distributing corporation, but the value of the stock so distributed shall be applied against and reduce the basis of the stock of the distributing corporation provided in subsection (d), and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

**SECTION 2.** This act shall take effect and be in force from and after January 1, 2012.



**Mississippi Legislature  
2012 Regular Session  
Senate Bill 2010**

**Description:** Mississippi Military Family Relief Fund; allow use when family resides in a Presidential Declared Disaster area.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 01/12 (S) Referred To Veterans and Military Affairs; Appropriations
- 2 02/21 (S) DR - TSDPCS: VM To AP
- 3 02/28 (S) Title Suff Do Pass Comm Sub
- 4 03/12 (S) Committee Substitute Adopted
- 5 03/12 (S) Passed (Vote)
- 6 03/14 (S) Transmitted To House
- 7 03/19 (H) Referred To Military Affairs; Appropriations
- 8 03/21 (H) DR - TSDP: MA To AP
- 9 04/03 (H) DR - TSDP: AP To MA
- 10 04/03 (H) Title Suff Do Pass
- 11 04/10 (H) Passed (Vote)
- 12 04/11 (H) Transmitted To Senate
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/13 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Code Section:** A 033-0004-0001

**----- Additional Information -----**

**Senate Committee:** Veterans and Military Affairs, Appropriations

**House Committee:** Military Affairs, Appropriations

**Principal Author:** Blount

**Additional Authors:** Montgomery

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2010

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Blount, Montgomery

To: Veterans and Military  
Affairs; Appropriations

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2010

AN ACT TO AMEND SECTION 33-4-1, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI MILITARY FAMILY RELIEF FUND TO BE USED TO MAKE GRANTS TO FAMILIES THAT EXPERIENCE FINANCIAL HARDSHIP WHEN A MILITARY FAMILY MEMBER IS MOBILIZED AND DEPLOYED UNDER TITLE 10 USC ACTIVE DUTY SERVICE OR IS A RESIDENT IN A PRESIDENTIAL DECLARED DISASTER AREA; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 33-4-1, Mississippi Code of 1972, is amended as follows:

33-4-1. A special fund to be designated the "Mississippi Military Family Relief Fund" is created in the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. The fund shall consist of any money designated for deposit therein from any source, including, but not limited to, money designated for deposit therein by Section 27-7-94, and private contributions. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund. Money in the fund shall be under the direction of the Military Department. Such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, based upon recommendations made by the Adjutant General. Money in the fund shall be utilized to make grants to families that experience a financial hardship as a result of a family member who is a Mississippi resident and a member of the Mississippi National Guard or the Reserves of the Armed Forces of the United States

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2010

being mobilized and deployed under Title 10 USC active duty service or being a resident in a Presidential Declared Disaster area. The Adjutant General shall establish eligibility requirements for receipt of the grants and the amount of the grants by rule no later than December 31, 2005.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2109

**Description:** Driver's License; additional \$1 for Keep Mississippi Beautiful, Inc., for litter prevention.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 01/13 (S) Referred To Highways and Transportation
- 2 02/29 (S) Title Suff Do Pass
- 3 03/07 (S) Passed *[Vote]*
- 4 03/08 (S) Transmitted To House
- 5 03/22 (H) Referred To Transportation; Ways and Means
- 6 03/28 (H) DR - TSDP: TR To WM
- 7 03/29 (H) DR - TSDP: WM To TR
- 8 03/29 (H) Title Suff Do Pass
- 9 04/10 (H) Passed *[Vote]*
- 10 04/11 (H) Transmitted To Senate
- 11 04/13 (S) Enrolled Bill Signed
- 12 04/13 (H) Enrolled Bill Signed
- 13 04/19 Approved by Governor

**Code Section:** A 063-0001-0043

---- Additional Information ----

**Senate Committee:** Highways and Transportation

**House Committee:** Transportation, Ways and Means

**Principal Author:** Butler (38th)

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2109

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Butler (38th), Jackson (11th) To: Highways and  
Transportation

### SENATE BILL NO. 2109

AN ACT TO AMEND SECTION 63-1-43, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON MAY CONTRIBUTE TO THE STATEWIDE LITTER PREVENTION FUND TO BE EXPENDED AS APPROVED BY KEEP MISSISSIPPI BEAUTIFUL, INC., WHEN THE PERSON RECEIVES HIS REGULAR DRIVER'S LICENSE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 63-1-43, Mississippi Code of 1972, is amended as follows:

63-1-43. (1) The fee for receiving the application and issuing the regular driver's or operator's license and the fee for renewing the license shall be:

(a) Eighteen Dollars (\$18.00) plus the applicable photograph fee for each applicant for a four-year license;

(b) Forty Dollars (\$40.00) plus the applicable photograph fee for each applicant for an eight-year license;

(c) Three Dollars (\$3.00) plus the applicable photograph fee for each applicant for a one-year license, except as provided in paragraph (d) of this subsection; \* \* \*

(d) Eighteen Dollars (\$18.00) plus the applicable photograph fee for a license for an applicant who is not a United States citizen and who does not possess a social security number issued by the United States government; and

(e) In addition to the fees required in paragraph (a) of this subsection, an applicant may contribute an additional One Dollar (\$1.00) which shall be deposited into the Statewide Litter Prevention Fund. The applicant shall be informed that he may contribute an additional One Dollar (\$1.00) which shall be deposited into the Statewide Litter Prevention Fund and shall be



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expended solely for the purpose of funding litter prevention projects or litter education programs, as recommended by the Statewide Litter Prevention Program of Keep Mississippi Beautiful, Inc.

All originals and renewals of regular operators' licenses shall be in compliance with Section 63-1-47.

(2) The fee for receiving the application and issuing a motorcycle endorsement shall be Five Dollars (\$5.00) when issued as an endorsement to a four-year license, and Ten Dollars (\$10.00) when issued as an endorsement to an eight-year license. Motorcycle endorsements shall be valid for the same period of time as the applicant's operator's license.

(3) The fee for receiving the application and issuing a restricted motorcycle operator's license and the fee for renewing such license shall be:

(a) Eleven Dollars (\$11.00) plus the applicable photograph fee for a four-year license;

(b) Eight Dollars (\$8.00) plus the applicable photograph fee for a one-year license; and

(c) Twenty-two Dollars (\$22.00) plus the applicable photograph fee for an eight-year license.

All originals and renewals of restricted motorcycle licenses shall be valid for the same period of time that an original regular driver's license may be issued to such person in compliance with Section 63-1-47.

(4) From and after January 1, 1990, every person who makes application for an original license or a renewal license to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as such terms are defined in Section 27-19-3, except for those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, shall, in lieu of the regular driver's license above provided for, apply for and obtain a Class

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D commercial driver's license. Except as otherwise provided in subsection (5) of this section, the fee for the issuance of a Class D commercial driver's license shall be Twenty-three Dollars (\$23.00) plus the applicable photograph fee for a period of four (4) years; however, except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a commercial license regardless of the purpose for which the pickup truck is used.

Except as otherwise provided in subsection (5) of this section, all originals and renewals of commercial licenses issued under this section shall be valid for a period of four (4) years, in compliance with Section 63-1-47. Only persons who operate the above-mentioned vehicles in the course of the regular and customary business of the owner shall be required to obtain a Class D commercial operator's license, and persons operating such vehicles for private purposes or in emergencies shall not be required to obtain such license.

(5) The original and each renewal of a commercial driver's license issued under this section to a person who is not a United States citizen and who does not possess a social security number issued by the United States government shall be issued for a period of one (1) year for a fee of Eight Dollars (\$8.00) plus the applicable photograph fee and shall expire one (1) year from the date of issuance. Such person may renew a commercial license issued under this section within thirty (30) days of expiration of the license.

(6) The Commissioner of Public Safety, by rule or regulation, shall establish a driver's license photograph fee which shall be the actual cost of the photograph rounded off to the next highest dollar. Monies collected for the photograph fee shall be deposited into a special photograph fee account which the Department of Public Safety shall use to pay the actual cost of producing the photographs. Any monies collected in excess of the

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actual costs of the photography shall be deposited to the General Fund of the State of Mississippi.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2176

**Description:** Education Employment Procedures Law; delete right of terminated or renewal school superintendent to request a hearing.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No



*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 01/20 (S) Referred To Education
- 2 03/06 (S) Title Suff Do Pass
- 3 03/13 (S) Amended
- 4 03/13 (S) Passed As Amended {Vote}
- 5 03/15 (S) Transmitted To House
- 6 03/19 (H) Referred To Education
- 7 03/29 (H) Title Suff Do Pass
- 8 04/10 (H) Passed {Vote}
- 9 04/11 (H) Transmitted To Senate
- 10 04/13 (S) Enrolled Bill Signed
- 11 04/13 (H) Enrolled Bill Signed
- 12 04/19 Approved by Governor

**Amendments:**

  [S] Amendment No 1 *Adopted* Voice Vote

**Code Section:** A 037-0009-0109, A 037-0009-0111, A 037-0009-0059

----- Additional Information -----

*Senate Committee:* Education

*House Committee:* Education

*Principal Author:* Hopson

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2176

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Hopson

To: Education

### SENATE BILL NO. 2176 (As Passed the Senate)

AN ACT TO AMEND SECTIONS 37-9-109, 37-9-111 AND 37-9-59, MISSISSIPPI CODE OF 1972, TO DELETE THE RIGHT OF A TERMINATED OR NONRENEWED SCHOOL SUPERINTENDENT TO REQUEST A HEARING BEFORE THE SCHOOL BOARD OR HEARING OFFICER; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-9-109, Mississippi Code of 1972, is amended as follows:

37-9-109. An employee who has received notice under Section 37-9-105, upon written request from the employee received by the district within ten (10) days of receipt of the notice by the employee, shall be entitled to:

(a) Written notice of the specific reasons for nonreemployment, together with a summary of the factual basis therefor, a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, which notice shall be given at least fourteen (14) days prior to any hearing; if the district fails to provide this information to the employee, then the recommendation for nonreemployment shall be null and void, and the board shall order the execution of a contract with the employee for an additional period of one (1) year;

(b) An opportunity for a hearing at which to present matters relevant to the reasons given for the proposed nonreemployment, including any reasons alleged by the employee to be the reason for nonreemployment; provided, however, that any school superintendent whose employment has been terminated by the school board under Section 37-9-59, or whose employment contract



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2176

has not been renewed by the school board shall not have the right to request a hearing before the school board or a hearing officer;

(c) Receive a fair and impartial hearing before the board or hearing officer; provided, however, that any school superintendent whose employment has been terminated by the school board under Section 37-9-59, or whose employment contract has not been renewed by the school board shall not have the right to request a hearing before the school board or a hearing officer;

(d) Be represented by legal counsel, at his own expense.

Any employee requesting a hearing shall provide the district, not less than five (5) days before the scheduled date for the hearing, a response to the specific reasons for nonreemployment, a list of witnesses and a copy of documentary evidence in support of the response intended to be presented at the hearing. If the employee fails to provide this information, then the recommendation of nonreemployment shall be final without the necessity of a hearing.

If the employee does not request a hearing, the recommendation regarding the nonreemployment of the employee shall be final.

**SECTION 2.** Section 37-9-111, Mississippi Code of 1972, is amended as follows:

37-9-111. (1) The school board, or its designee, upon request for a hearing from an employee under the terms of Sections 37-9-101 through 37-9-113, shall set the time, place and date of such hearing and notify the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the board or before a hearing officer appointed for such purpose by the board, either from among its own membership, from the staff of the school district or some other qualified and impartial person, but in no event shall the

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2176

hearing officer be the staff member responsible for the initial recommendation of nonreemployment. No hearing officer may have an interest in the outcome of a hearing, nor may a hearing officer be related to a board member, any administrator making the recommendations of nonreemployment or the employee. Once a hearing officer is appointed, no ex parte communications may be made regarding any substantive provisions of the hearing.

(2) The hearing must be held in executive session unless the employee elects to have a public hearing. If an employee makes this election, however, the board or the hearing officer, as the case may be, may order any part of the hearing to be held in executive session, if, in the opinion of the board or the hearing officer, the testimony to be elicited deals with matters involving the reputation or character of another person. Notwithstanding the election by an employee for a public hearing, any testimony by minor witnesses must be held in executive session and considered confidential personnel records and confidential student records, subject to an expectation of reasonable privacy and confidentiality. Public disclosure of these records may be by court order only.

(3) The district shall present evidence, either in written or oral form, at the hearing in support of its recommendation for nonreemployment.

The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the proposed nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the parties a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues and to cross-examine witnesses presented at the hearing. The board or the hearing officer may require any portion of the evidence to be submitted in the form of depositions

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2176

or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.

(4) The board shall cause to be made stenographic notes of the proceedings. In the event of a judicial appeal of the board's decision, the entire expense of the transcript and notes shall be assessed as court costs.

(5) The board shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the report of the hearing officer, if any, the record of the proceedings and, based solely thereon, conclude whether the proposed nonreemployment is a proper employment decision, is based upon a valid educational reason or noncompliance with school district personnel policies and is based solely upon the evidence presented at the hearing, and shall notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conclusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the board. If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in his own behalf, either in person or by his attorney, prior to a final decision by the board.

(6) In conducting a hearing, the board or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in Sections 37-9-101 through 37-9-113, but may conduct such hearing in such manner as best to ascertain the rights of the parties; however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the board or hearing officer.

(7) In the event the decision of the school board is in favor of the employee, the board shall have the authority to order

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the execution of a contract with the employee for an additional period of one (1) year.

(8) For purposes of conducting hearings under Sections 37-9-101 through 37-9-113, the board or hearing officer shall have the authority to issue subpoenas for witnesses and to compel their attendance and the giving of evidence. Any expense connected therewith shall be borne by the party requesting the subpoenas, which shall include an appearance fee for each witness so subpoenaed not inconsistent with state laws governing payments to witnesses. In the event it is necessary to enforce or to quash a subpoena issued to compel the attendance of a witness, application shall be made with the chancery court of the county where the school board is located.

(9) This section shall not be applicable to a superintendent whose employment has been terminated by the school board under Section 37-9-59, or whose employment contract has not been renewed by the school board.

**SECTION 3.** Section 37-9-59, Mississippi Code of 1972, is amended as follows:

37-9-59. For incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause the superintendent of schools may dismiss or suspend any licensed employee in any school district. Before being so dismissed or suspended any licensed employee shall be notified of the charges against him and he shall be advised that he is entitled to a public hearing upon said charges. Provided, however, that a school superintendent whose employment has been terminated under this section shall not have the right to request a hearing before the school board or a hearing officer. In the event the continued presence of said employee on school premises poses a potential threat or danger to the health, safety or general welfare of the students, or, in the discretion of the superintendent, may interfere with or cause a disruption of normal school operations,



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the superintendent may immediately release said employee of all duties pending a hearing if one is requested by the employee. In the event a licensed employee is arrested, indicted or otherwise charged with a felony by a recognized law enforcement official, the continued presence of the licensed employee on school premises shall be deemed to constitute a disruption of normal school operations. The school board, upon a request for a hearing by the person so suspended or removed shall set a date, time and place for such hearing which shall be not sooner than five (5) days nor later than thirty (30) days from the date of the request. The procedure for such hearing shall be as prescribed for hearings before the board or hearing officer in Section 37-9-111. From the decision made at said hearing, any licensed employee shall be allowed an appeal to the chancery court in the same manner as appeals are authorized in Section 37-9-113. Any party aggrieved by action of the chancery court may appeal to the Mississippi Supreme Court as provided by law. In the event that a licensed employee is immediately relieved of duties pending a hearing, as provided in this section, said employee shall be entitled to compensation for a period up to and including the date that the initial hearing is set by the school board, in the event that there is a request for such a hearing by the employee. In the event that an employee does not request a hearing within five (5) calendar days of the date of the notice of discharge or suspension, it shall constitute a waiver of all rights by said employee and such discharge or suspension shall be effective on the date set out in the notice to the employee.

The school board of every school district in this state is hereby prohibited from denying employment or reemployment to any person as a superintendent, principal or licensed employee, as defined in Section 37-19-1, or as a noninstructional personnel, as defined in Section 37-9-1, for the single reason that any eligible child of such person does not attend the school system in which



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2176

such superintendent, principal, licensed employee or noninstructional personnel is employed.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2186

**Description:** Counterfeit controlled substances; prohibit sale, manufacture or possession.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 01/20 (S) Referred To Drug Policy;Judiciary, Division B
- 2 03/01 (S) DR - TSDP: DP To JB
- 3 03/06 (S) Title Suff Do Pass
- 4 03/12 (S) Passed *{Vote}*
- 5 03/13 (S) Transmitted To House
- 6 03/14 (H) Referred To Judiciary B
- 7 03/29 (H) Title Suff Do Pass
- 8 04/05 (H) Passed *{Vote}*
- 9 04/09 (H) Transmitted To Senate
- 10 04/12 (S) Enrolled Bill Signed
- 11 04/12 (H) Enrolled Bill Signed
- 12 04/18 Approved by Governor

**Code Section:** A 041-0029-0146

----- Additional Information -----

**Senate Committee:** Drug Policy, Judiciary, Division B

**House Committee:** Judiciary B

**Principal Author:** Watson

**Additional Authors:** Jordan, Jackson (11th), Simmons (12th), Jackson (15th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2186

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Watson, Jordan, Jackson  
(11th), Simmons (12th), Jackson (15th)

To: Drug Policy; Judiciary,  
Division B

### SENATE BILL NO. 2186

AN ACT TO AMEND SECTION 41-29-146, MISSISSIPPI CODE OF 1972, TO PROHIBIT SALE, MANUFACTURE OR POSSESSION OF ANYTHING FALSELY ALLEGED TO BE A CONTROLLED SUBSTANCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 41-29-146, Mississippi Code of 1972, is amended as follows:

41-29-146. (1) It shall be unlawful for any person to sell, produce, manufacture or possess with the intent to sell, produce, manufacture, distribute or dispense any substance which is falsely represented to be a prescription or legend drug or a controlled substance.

(2) The provisions of this section shall not apply to a law enforcement officer acting in the course and scope of his employment or to a medical practitioner, pharmacist or other person authorized to dispense or administer controlled substances.

(3) Any person who violates this section shall, upon conviction, be guilty of a felony and may be punished by confinement in the custody of the Department of Corrections for not more than five (5) years or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2223

**Description:** New Home Warranty Act; revise definition of certain term and revise builder's warranty to owner.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 01/23 (S) Referred To Insurance
- 2 02/22 (S) Title Suff Do Pass
- 3 03/07 (S) Passed (Vote)
- 4 03/08 (S) Transmitted To House
- 5 03/22 (H) Referred To Insurance
- 6 03/27 (H) Title Suff Do Pass
- 7 04/04 (H) Passed (Vote)
- 8 04/04 (H) Motion to Reconsider Entered (Lamar, Chism, Buck (5th))
- 9 04/09 (H) Motion to Reconsider Tabled
- 10 04/09 (H) Transmitted To Senate
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/12 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 083-0058-0003, A 083-0058-0005

----- **Additional Information** -----

**Senate Committee:** Insurance

**House Committee:** Insurance

**Principal Author:** Massey

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2223

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Massey

To: Insurance

### SENATE BILL NO. 2223

AN ACT TO AMEND SECTION 83-58-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "MAJOR STRUCTURAL DEFECT" AS USED IN THE NEW HOME WARRANTY ACT; TO AMEND SECTION 83-58-5, MISSISSIPPI CODE OF 1972, TO REVISE THE BUILDER'S WARRANTY TO THE OWNER UNDER THE NEW HOME WARRANTY ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 83-58-3, Mississippi Code of 1972, is amended as follows:

83-58-3. For purposes of this chapter the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Builder" means any person, corporation, partnership, or other entity which constructs a home or engages another to construct a home, including a home occupied initially by its builder as his residence, for the purpose of sale.

(b) "Building standards" means the standards contained in the building code, mechanical-plumbing code, and electrical code in effect in the county, municipality or other local political subdivision where a home is to be located, at the time construction of that home is commenced, or, if the county, city or other local political subdivision has not adopted such codes, the Standard Building Code, together with any additional performance standards, if any, which the builder may undertake to be in compliance.

(c) "Home" means any new structure designed and used only for residential use.



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2223

(d) "Initial purchaser" means any person for whom a home is built or the first person to whom a home is sold upon completion of construction.

(e) "Major structural defect" means \* \* \* actual physical damage to any of the following \* \* \* load-bearing portions of a home caused by failure of the load-bearing portions and its load-bearing functions, as follows to wit:

- (i) Foundation systems and footings;
- (ii) Beams;
- (iii) Girders;
- (iv) Lintels;
- (v) Columns;
- (vi) Load-bearing walls and partitions;
- (vii) Floor systems;
- (viii) Roof-framing systems.

(f) "Owner" means the initial purchaser of a home and any of his successors in title to a home during the time the warranties provided under this chapter are in effect.

(g) "Warranty commencement date" means the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

**SECTION 2.** Section 83-58-5, Mississippi Code of 1972, is amended as follows:

83-58-5. (1) Subject to the exclusions provided in this section, every builder warrants the following to the owner:

(a) One (1) year following the warranty commencement date, the home will be free from any defect due to noncompliance with the building standards.

(b) Six (6) years following the completion date, the home will be free from major structural defects due to noncompliance with the building standards.

(2) Unless the parties otherwise agree in writing, the builder's warranty shall exclude the following items:

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2223

(a) Defects in outbuildings including detached garages and detached carports, except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the home; swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and planting; off-site improvements including streets, roads, drainage and utilities or any other improvements not a part of the home itself.

(b) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home.

(c) Any damage to the extent it is caused or made worse by any of the following:

(i) Negligence, improper maintenance or improper operation by anyone other than the builder or any employee, agent or subcontractor of the builder.

(ii) Failure by anyone other than the builder or any employee, agent or subcontractor of the builder to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures.

(iii) Any change, alteration or addition made to the home by anyone after the initial occupancy by the owner, except any change, alteration or addition performed by the builder, or any employee, agent, or subcontractor of the builder.

(iv) Dampness, condensation or other damage due to the failure of the owner to maintain adequate ventilation or drainage.

(d) Any loss or damage which the owner has not taken timely action to minimize.

(e) Any defect in, or any defect caused by, materials or work supplied by anyone other than the builder, or any employee, agent or subcontractor of the builder.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2223

(f) Normal wear and tear or normal deterioration.

(g) Loss or damage which does not constitute a defect in the construction of the home by the builder, or any employee, agent or subcontractor of the builder.

(h) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mud slide, earthquake, volcanic eruption, wind-driven water and changes in the level of the underground water table which are not reasonably foreseeable.

(i) Insect damage and rotting of any kind.

(j) Mold or mold damage, except in cases where the builder's negligence was a proximate or contributing cause of the mold or mold damage.

(k) Any condition which does not result in actual physical damage to the home.

(l) Failure of the builder to complete construction of the home.

(m) Any defect not reported in writing by registered or certified mail to the builder or insurance company, as appropriate, prior to the expiration of the period of coverage of that defect plus thirty (30) days.

(n) Consequential damages.

(o) Any loss or damage to a home caused by soil conditions or soil movement if the home is constructed on land owned by the initial purchaser and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement.

(p) Any defect in an electrical, plumbing, heating, air conditioning or similar fixture not manufactured by the builder for which the manufacturer provides a warranty regardless of duration.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2223

(3) The provisions of this section establish minimum required warranties and shall not be waived by the owner or reduced by the builder, provided the home is a single-family dwelling to be occupied by an owner as his home.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2256

**Description:** Youth court; permit referral to drug court and prohibit sex offender access to MYCIDS, beaches and campgrounds.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No


*Vote type required:* Majority

*Effective date:* \*\* See Text

**History of Actions:**

- 1 01/30 (S) Referred To Drug Policy;Judiciary, Division B
- 2 03/01 (S) DR - TSDP: DP To JB
- 3 03/06 (S) Title Suff Do Pass
- 4 03/12 (S) Amended
- 5 03/12 (S) Passed As Amended *{Vote}*
- 6 03/14 (S) Transmitted To House
- 7 03/19 (H) Referred To Judiciary A
- 8 03/28 (H) Title Suff Do Pass
- 9 04/04 (H) Passed *{Vote}*
- 10 04/04 (H) Motion to Reconsider Entered (Malone, Baker, Reynolds)
- 11 04/09 (H) Motion to Reconsider Tabled
- 12 04/09 (H) Transmitted To Senate
- 13 04/12 (S) Enrolled Bill Signed
- 14 04/12 (H) Enrolled Bill Signed
- 15 04/18 Approved by Governor

**Amendments:**

 [S] Amendment No 1 *Adopted* Voice Vote

**Code Section:** A 043-0021-0357, A 045-0033-0026

---- Additional Information ----

**Senate Committee:** Drug Policy, Judiciary, Division B

**House Committee:** Judiciary A



**2012 GENERAL LAWS OF MISSISSIPPI, SB 2256**

*Principal Author:* Tollison

*Additional Authors:* Jordan, Jackson (11th), Simmons (12th), Gollott, Jackson (15th), Jolly

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2256

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison, Jordan, Jackson  
(11th), Simmons (12th), Gollott, Jackson  
(15th), Jolly

To: Drug Policy; Judiciary,  
Division B

SENATE BILL NO. 2256  
(As Passed the Senate)

AN ACT TO AMEND SECTION 43-21-357, MISSISSIPPI CODE OF 1972, TO ALLOW THE YOUTH COURT INTAKE UNIT TO RECOMMEND THAT A CHILD BE REFERRED TO THE YOUTH COURT DRUG COURT AND TO ALLOW THE YOUTH COURT THE OPTION TO ORDER THAT A CHILD BE REFERRED TO THE YOUTH COURT DRUG COURT; TO CREATE SECTION 45-33-61, MISSISSIPPI CODE OF 1972, TO PROHIBIT SEX OFFENDERS FROM ACCESSING THE ADMINISTRATIVE OFFICE OF COURTS' DATA MANAGEMENT SYSTEM OR "MYCIDS"; TO AMEND SECTION 45-33-26, MISSISSIPPI CODE OF 1972, TO PROHIBIT SEX OFFENDERS FROM GOING TO PUBLIC BEACHES AND PUBLIC CAMPGROUNDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 43-21-357, Mississippi Code of 1972, is amended as follows:

43-21-357. (1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit. If it appears from the preliminary inquiry that the child

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2256

or other children in the same environment are within the jurisdiction of the court, the youth court intake unit shall recommend to the youth court:

- (a) That the youth court take no action;
- (b) That an informal adjustment be made;
- (c) The Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) That the child is warned or counseled informally; \* \* \*

(e) That the child be referred to the youth court drug court; or

(f) That a petition be filed.

(2) The youth court shall then, without a hearing:

- (a) Order that no action be taken;
- (b) Order that an informal adjustment be made;
- (c) Order that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) Order that the child is warned or counseled informally; \* \* \*

(e) That the child be referred to the youth court drug court; or

(f) Order that a petition be filed.

(3) If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

**SECTION 2.** The following shall be codified as Section 45-33-61, Mississippi Code of 1972:

45-33-61. (1) A person convicted of a sex offense shall not access the Administrative Office of Courts' youth court data management system known as the Mississippi Youth Court Information Delivery System or "MYCIDS."

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2256

(2) This section applies to all registered sex offenders without regard to the date of conviction for a registrable offense.

SECTION 3. Section 45-33-26, Mississippi Code of 1972, is amended as follows:

45-33-26. (1) (a) Unless exempted under subsection (2), it is unlawful for a person required to register as a sex offender under Section 45-33-25:

(i) To be present in any school building, on real property comprising any school, or in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen (18) are present in the building, on the grounds or in the conveyance; or

(ii) To loiter within five hundred (500) feet of a school building or real property comprising any school while persons under the age of eighteen (18) are present in the building or on the grounds.

(b) It is unlawful for a person required to register as a sex offender under Section 45-33-25 to visit or be in or about any public beach or public campground where minor children congregate without advance approval from the Director of the Department of Public Safety Sex Offender Registry, and the registrant is required to immediately report any incidental contact with minor children to the director.

(2) (a) A person required to register as a sex offender who is a parent or guardian of a student attending the school and who complies with subsection (3) may be present on school property if the parent or guardian is:

(i) Attending a conference at the school with school personnel to discuss the progress of the sex offender's child academically or socially;

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(ii) Participating in child review conferences in which evaluation and placement decisions may be made with respect to the sex offender's child regarding special education services;

(iii) Attending conferences to discuss other student issues concerning the sex offender's child such as retention and promotion;

(iv) Transporting the sex offender's child to and from school; or

(v) Present at the school because the presence of the sex offender has been requested by the principal for any other reason relating to the welfare of the child.

(b) Subsection (1) of this section shall not apply to a sex offender who is legally enrolled in a particular school or is participating in a school-sponsored educational program located at a particular school when the sex offender is present at that school.

(3) (a) In order to exercise the exemption under subsection (2), a parent or guardian who is required to register as a sex offender must notify the principal of the school of the sex offender's presence at the school unless the offender: (i) has permission to be present from the superintendent or the school board, or (ii) the principal has granted ongoing permission for regular visits of a routine nature.

(b) If permission is granted by the superintendent or the school board, the superintendent or school board president must inform the principal of the school where the sex offender will be present. Notification includes the nature of the sex offender's visit and the hours when the sex offender will be present in the school, and the sex offender is responsible for notifying the principal's office upon arrival and upon departure. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2256

(4) For the purposes of this section, the following terms shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "School" means a public or private preschool, elementary school or secondary school.

(b) "Loiter" means standing or sitting idly, whether in or out of a vehicle, or remaining in or around school property without a legitimate reason.

(c) "School official" means the principal, a teacher, any other certified employee of the school, the superintendent of schools, or a member of the school board.

(5) A sex offender who violates this section is guilty of a misdemeanor and subject to a fine not to exceed One Thousand Dollars (\$1,000.00), incarceration not to exceed six (6) months in jail, or both.

(6) It is a defense to prosecution under this section that the sex offender did not know and could not reasonably know that the property or conveyance fell within the proscription of this section.

(7) Nothing in this section shall be construed to infringe upon the constitutional right of a sex offender to be present in a school building that is used as a polling place for the purpose of voting.

**SECTION 4.** Sections 1 and 2 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2283

**Description:** Sirens; authorize use by MEMA first responder vehicles.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 01/30 (S) Referred To Highways and Transportation;Judiciary, Division A
- 2 02/29 (S) DR - TSDP: HI To JA
- 3 03/01 (S) Title Suff Do Pass
- 4 03/07 (S) Passed {Vote}
- 5 03/08 (S) Transmitted To House
- 6 03/22 (H) Referred To Transportation;Judiciary B
- 7 03/28 (H) DR - TSDP: TR To JB
- 8 04/03 (H) DR - TSDP: JB To TR
- 9 04/03 (H) Title Suff Do Pass
- 10 04/10 (H) Passed {Vote}
- 11 04/11 (H) Transmitted To Senate
- 12 04/13 (S) Enrolled Bill Signed
- 13 04/13 (H) Enrolled Bill Signed
- 14 04/19 Approved by Governor

**Code Section:** A 063-0003-0103

----- Additional Information -----

**Senate Committee:** Highways and Transportation, Judiciary, Division A

**House Committee:** Transportation, Judiciary B

**Principal Author:** Lee

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2283

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Lee, Jackson (11th)

To: Highways and  
Transportation; Judiciary,  
Division A

### SENATE BILL NO. 2283

AN ACT TO AMEND SECTION 63-3-103, MISSISSIPPI CODE OF 1972, TO REVISE AND CLARIFY THE DEFINITION OF AUTHORIZED EMERGENCY VEHICLE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 63-3-103, Mississippi Code of 1972, is amended as follows:

63-3-103. (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term "motor vehicle" shall not include electric personal assistive mobility devices.

(c) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor.

(d) "Authorized emergency vehicle" means every vehicle of the fire department (fire patrol), every police vehicle, every 911 Emergency Communications District vehicle, every such ambulance and special use EMS vehicle as defined in Section 41-59-3, every Mississippi Emergency Management Agency vehicle as is designated or authorized by the Executive Director of MEMA and every emergency vehicle of municipal departments or public service

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2283

corporations as is designated or authorized by the commission or the chief of police of an incorporated city.

(e) "School bus" means every motor vehicle operated for the transportation of children to or from any school, provided same is plainly marked "School Bus" on the front and rear thereof and meets the requirements of the State Board of Education as authorized under Section 37-41-1.

(f) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle and includes travel trailers, fifth-wheel trailers, camping trailers, truck campers and motor homes.

(g) "Motor home" means a motor vehicle that is designed and constructed primarily to provide temporary living quarters for recreational, camping or travel use.

(h) "Electric assistive mobility device" means a self-balancing two-tandem wheeled device, designed to transport only one (1) person, with an electric propulsion system that limits the maximum speed of the device to fifteen (15) miles per hour.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2289

**Description:** Traffic citations; camera citations from another state not placed on driver's record in this state.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 01/30 (S) Referred To Insurance;Judiciary, Division B
- 2 02/22 (S) DR - TSDP: IN To JB
- 3 03/06 (S) Title Suff Do Pass
- 4 03/08 (S) Passed *{Vote}*
- 5 03/08 (S) Immediate Release
- 6 03/08 (S) Transmitted To House
- 7 03/14 (H) Referred To Insurance;Judiciary B
- 8 03/20 (H) DR - TSDP: IN To JB
- 9 03/29 (H) DR - TSDP: JB To IN
- 10 03/29 (H) Title Suff Do Pass
- 11 04/05 (H) Passed *{Vote}*
- 12 04/09 (H) Transmitted To Senate
- 13 04/12 (S) Enrolled Bill Signed
- 14 04/12 (H) Enrolled Bill Signed
- 15 04/18 Approved by Governor

**Amendments:**

 [S] Amendment No 1 *Not Germane*

----- Additional Information -----

**Senate Committee:** Insurance, Judiciary, Division B

**House Committee:** Insurance, Judiciary B

**Principal Author:** Stone

**Additional Authors:** Browning, Butler (38th), Fillingane, Gandy, Hill, Parks, Simmons (12th), Jackson (11th)



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2289

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Stone, Browning, Butler  
(38th), Fillingane, Gandy, Hill, Parks,  
Simmons (12th), Jackson (11th)

To: Insurance; Judiciary,  
Division B

### SENATE BILL NO. 2289

AN ACT TO PROHIBIT TRAFFIC CITATIONS ISSUED BY OTHER STATES FROM THE USE OF AN AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM OR A TRAFFIC LAW ENFORCEMENT METHOD THAT IS NOT AUTHORIZED BY THE STATE OF MISSISSIPPI FROM BEING PLACED ON A DRIVER'S RECORD IN THIS STATE OR REPORTED TO INSURANCE COMPANIES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) A traffic citation issued by another state from the use of an automated traffic law enforcement system or a traffic law enforcement method not authorized by the State of Mississippi shall not be placed on the person's driving record in this state.

(2) A traffic citation issued by another state from the use of an automated traffic law enforcement system or a traffic law enforcement method not authorized by the State of Mississippi shall not be reported to an insurance company for insurance purposes.

(3) For the purposes of this section, "automated traffic law enforcement system" means a camera, optical device or other equipment that:

- (a) Detects a traffic law violation;
- (b) Records images of the license plate of a motor vehicle that is not operated in compliance with traffic laws; and
- (c) Issues a citation for a traffic law violation.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2316

**Description:** Boll weevil fund; extend repealer on annual audit of MS Boll Weevil Management Corporation Trust Fund.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* Passage

**History of Actions:**

- 1 02/03 (S) Referred To Agriculture;Accountability, Efficiency, Transparency
- 2 02/21 (S) DR - TSDPCS: AG To AC
- 3 02/28 (S) Title Suff Do Pass Comm Sub
- 4 03/07 (S) Committee Substitute Adopted
- 5 03/07 (S) Passed {Vote}
- 6 03/08 (S) Transmitted To House
- 7 03/21 (H) Referred To Agriculture;Appropriations
- 8 03/27 (H) DR - TSDP: AG To AP
- 9 04/03 (H) DR - TSDP: AP To AG
- 10 04/03 (H) Title Suff Do Pass
- 11 04/10 (H) Passed {Vote}
- 12 04/11 (H) Transmitted To Senate
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/13 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Code Section:** A 069-0037-0017

----- Additional Information -----

**Senate Committee:** Agriculture, Accountability, Efficiency, Transparency

**House Committee:** Agriculture, Appropriations

**Principal Author:** Hudson

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2316

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Hudson, Jackson (11th)

To: Agriculture;  
Accountability, Efficiency,  
Transparency

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2316

AN ACT TO AMEND SECTION 69-37-17, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE ANNUAL AUDIT OF THE MISSISSIPPI BOLL WEEVIL MANAGEMENT CORPORATION TRUST FUND; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 69-37-17, Mississippi Code of 1972, is amended as follows:

69-37-17. (1) At the request of the corporation, the bureau shall authorize a statewide referendum among all Mississippi cotton growers on the question of whether an assessment, not to exceed One Dollar (\$1.00) per acre, shall be levied upon all cotton producers to offset, in whole or in part, the cost of maintaining the corporation, conducting referenda, and/or conducting a program to collect data and information on boll weevil populations and control costs. Any assessments levied for data-collecting programs as a result of the referendum shall be in addition to assessments being collected to support any other boll weevil management programs in the state.

(2) At the request of the corporation, the bureau shall authorize a statewide referendum among all Mississippi cotton growers on the question of whether an assessment, not to exceed Twelve Dollars (\$12.00) per acre, shall be levied upon all cotton growers to offset, in whole or in part, the cost of managing boll weevil suppression, pre-eradication, eradication, or post-eradication programs authorized by this chapter or by any other law of this state. The programs shall be designed on a statewide basis.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2316

(3) The assessment levied under this chapter shall be based upon the level of boll weevil infestation and the anticipated cost of conducting the proposed program, as determined by available scientific data, and the number of acres of cotton planted in the specified management zone. The maximum amount of the assessment, the period of time for which it shall be levied, how it shall be levied, and when it shall be paid shall be determined by the bureau and the board and established by regulations according to this section. The maximum amount of the assessment, the period of time for which it will be levied, and when the payment is due shall appear on all ballots for the referenda authorized by subsections (1) and (2) of this section.

(4) All cotton growers having membership in a local cotton growers association shall be entitled to vote in any referendum authorized by subsections (1) and (2) of this section, and the bureau, after consultation with the corporation, shall determine any questions of eligibility to vote. A cotton grower must be growing cotton within this state and be a member of a local cotton growers association in order to be eligible to vote in elections and referenda concerning boll weevil management practices.

(5) Each eligible cotton grower shall be mailed a ballot upon which to cast a vote for or against the boll weevil suppression, pre-eradication, eradication or post-eradication program.

(6) Passage of a referendum under subsection (1) or (2) of this section shall require that at least twenty percent (20%) of the registered cotton growers vote in the referendum and that a majority of those voting statewide approve the referendum.

(7) (a) The assessments collected by the department under this chapter shall be promptly remitted to the State Treasury on behalf of the corporation in the special fund established in paragraph (b) of this subsection to be held in trust for the use and benefit of the corporation in administering the designated

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2316

boll weevil management program through the suppression, pre-eradication, eradication or post-eradication of boll weevils.

(b) There is created within the State Treasury a special fund to be designated the "Mississippi Boll Weevil Management Corporation Trust Fund" into which shall be deposited all the revenues collected by the department for assessments levied under the provisions of this section. Monies in the fund shall be disbursed upon warrants issued by the State Fiscal Officer upon requisitions signed by the corporation's board. Monies in the fund shall remain inviolate and any unexpended amounts remaining in the fund at the end of the fiscal year, and any interest earned thereon, shall be divested to the corporation.

(8) (a) The corporation shall provide to the department an annual audit of its accounts performed by a certified public accountant.

(b) (i) The corporation shall provide the annual audit no later than November 15 for the preceding calendar year.

(ii) This paragraph (b) shall stand repealed on July 1, 2016.

(9) The assessments collected by the department under this chapter shall not be considered as "state" funds.

(10) Upon completion or termination of a program, any unused funds shall be transferred to and deposited in the Boll Weevil Management Fund created under Section 69-37-39, for the purpose of being used if there is a future occurrence of a boll weevil outbreak in the state.

**SECTION 2.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2325

**Description:** Wildlife; extend repealer on the authority of the Comm. on Wildlife, Fisheries & Parks to regulate the hunting of nonnative cervids.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/03 (S) Referred To Wildlife, Fisheries and Parks
- 2 03/01 (S) Title Suff Do Pass Comm Sub
- 3 03/07 (S) Committee Substitute Adopted
- 4 03/07 (S) Amended
- 5 03/07 (S) Passed As Amended {Vote}
- 6 03/12 (S) Transmitted To House
- 7 03/14 (H) Referred To Wildlife, Fisheries and Parks
- 8 03/29 (H) Title Suff Do Pass
- 9 04/05 (H) Passed {Vote}
- 10 04/09 (H) Transmitted To Senate
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/12 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Amendments:**

  [S] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote

**Code Section:** A 049-0007-0058.3, A 049-0011-0003, A 049-0011-0027

---- Additional Information ----

**Senate Committee:** Wildlife, Fisheries and Parks

**House Committee:** Wildlife, Fisheries and Parks

**Principal Author:** Ward

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2325

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Ward

To: Wildlife, Fisheries and  
Parks

SENATE BILL NO. 2325  
(As Passed the Senate)

AN ACT TO AMEND SECTION 49-7-58.3 AND SECTION 49-11-3, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALERS ON THE AUTHORITY OF THE COMMISSION ON WILDLIFE, FISHERIES AND PARKS TO REGULATE THE HUNTING ON NONNATIVE CERVIDS IN ENCLOSURES; TO INCREASE THE PENALTY FOR VIOLATIONS; TO AMEND SECTION 49-11-27, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 49-7-58.3, Mississippi Code of 1972, is amended as follows:

49-7-58.3. (1) The commission \* \* \* may regulate the hunting of nonnative cervids in noncommercial wildlife enclosures, and the Department of Wildlife, Fisheries and Parks may enforce such regulations and laws in the same manner as commercial wildlife enclosures as provided in Section 49-11-25.

(2) A violation of this section is a Class I violation and punishable as provided in Section 49-7-141.

(3) This section shall repeal on July 1, 2014.

**SECTION 2.** Section 49-11-3, Mississippi Code of 1972, is amended as follows:

49-11-3. (1) The department may issue operating licenses to any person, partnership, association or corporation for the operation of shooting preserves or commercial wildlife enclosures that meet the following requirements and any applicable regulations:

(a) Each shooting preserve shall contain a minimum of one hundred (100) acres in one (1) tract of leased or owned land (including water area, if any) and shall be restricted to not more than six hundred forty (640) contiguous acres (including water

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2325

area, if any), except that preserves confined to the releasing of ducks only may be authorized to operate with a minimum of fifty (50) contiguous acres (including water area).

(b) The boundaries of each shooting preserve shall be clearly defined and posted with signs erected at intervals of three hundred (300) feet or less.

(c) Each commercial wildlife enclosure shall contain a minimum of three hundred (300) acres in one (1) tract of leased or owned land (including water area, if any). No commercial wildlife enclosure shall be constructed in such a manner as to allow ingress of native wild animals without providing means of egress.

(d) The preserve or enclosure must be privately owned and operated.

(2) The commission may issue any rules or regulations necessary to regulate shooting preserves and commercial wildlife enclosures and to enforce this chapter.

(3) (a) The commission may regulate the hunting of nonnative cervids within a commercial wildlife enclosure, and the department may enter such enclosure as provided under Section 49-11-25 and enforce such regulations.

(b) This subsection (3) shall repeal on July 1, 2014.

**SECTION 3.** Section 49-11-27, Mississippi Code of 1972, is amended as follows:

49-11-27. Any person, firm or corporation violating any provision of this chapter is guilty of a Class I violation, and upon conviction thereof shall be punished as provided in Section 49-7-141. A multiple violator of this chapter shall be assessed double the maximum allowable fine \* \* \*.

**SECTION 4.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2330

**Description:** School district consolidation; require in certain counties.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No





*Vote type required:* Three/Fifths

*Effective date:* VRA

**History of Actions:**

- 1 02/06 (S) Referred To Education
- 2 02/07 (S) Title Suff Do Pass Comm Sub
- 3- 02/08 (S) Committee Substitute Adopted
- 4 02/08 (S) Amended
- 5 02/08 (S) Passed As Amended {Vote}
- 6 02/09 (S) Transmitted To House
- 7 02/13 (H) Referred To Education
- 8 04/02 (H) Title Suff Do Pass
- 9 04/10 (H) Passed {Vote}
- 10 04/10 (H) Motion to Reconsider Entered (Thomas, Moore, Clarke, Flaggs)
- 11 04/11 (H) Motion to Reconsider Tabled
- 12 04/11 (H) Transmitted To Senate
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/13 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Amendments:**

-   [S] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote
-   [S] Amendment No 2 (Cmte Sub) **Adopted** Voice Vote

**Code Section:** A 037-0007-0103

----- **Additional Information** -----

**Senate Committee:** Education

**House Committee:** Education

*Principal Author:* Tollison

*Additional Authors:* Harkins, McDaniel, Watson



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2330

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison, Harkins, McDaniel,  
Watson

To: Education

SENATE BILL NO. 2330  
(As Passed the Senate)

AN ACT TO CODIFY SECTION 37-7-104, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN ANY MISSISSIPPI COUNTY HAVING THREE SCHOOL DISTRICTS, ALL OF WHICH ARE UNDER CONSERVATORSHIP BY THE MISSISSIPPI DEPARTMENT OF EDUCATION, THERE SHALL BE AN ADMINISTRATIVE CONSOLIDATION INTO ONE COUNTYWIDE SCHOOL DISTRICT; TO PROVIDE FOR A NEW COUNTY BOARD OF EDUCATION TO BE ELECTED IN SUCH COUNTY IN A NOVEMBER 2013 SPECIAL ELECTION; TO PROVIDE THAT THE NEW COUNTY BOARD OF EDUCATION SHALL SERVE AS THE LEAD AGENCY TO CONSOLIDATE THE SCHOOL DISTRICTS IN SUCH COUNTY AND TO DIRECT THE STATE BOARD OF EDUCATION TO ADMINISTRATIVELY CONSOLIDATE ANY SCHOOL DISTRICT WHICH DOES NOT VOLUNTARILY FOLLOW THE CONSOLIDATION ORDER; TO ABOLISH THE FORMER SCHOOL BOARDS FOLLOWING THE ADMINISTRATIVE CONSOLIDATION AND PROVIDE FOR THE TRANSFER OF SCHOOL DISTRICT ASSETS AND LIABILITIES; TO PROVIDE FOR THE APPOINTMENT OF A NEW COUNTY SUPERINTENDENT OF EDUCATION IN SAID COUNTY; TO PROVIDE FOR EXECUTION OF TEACHER AND SCHOOL DISTRICT EMPLOYEE CONTRACTS IN THE NEW SCHOOL DISTRICTS AND TO PROVIDE FOR THE PREPARATION OF SCHOOL DISTRICT BUDGETS IN THE NEW SCHOOL DISTRICTS; TO DIRECT THE STATE BOARD OF EDUCATION TO PROMULGATE REGULATIONS TO IMPLEMENT SUCH ADMINISTRATIVE CONSOLIDATION; TO AMEND SECTION 37-7-103, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 37-7-104, Mississippi Code of 1972:

37-7-104. (1) In any Mississippi county in which are located, as of February 8, 2012, three (3) school districts and only three (3) school districts, all of which are under conservatorship as defined by the Mississippi Department of Education as of February 8, 2012, there shall be an administrative consolidation of all of the school districts in the county into one (1) countywide school district with one (1) county board of education. The State Board of Education shall determine the school district(s) applicable to the provisions of this section and spread this finding on the minutes of its August 2012 meeting.

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On or before September 1, 2012, the State Board of Education shall serve the local school boards applicable to the provisions of this section, or the Mississippi Department of Education Conservator for each of the three (3) school districts, with notice and instruction regarding the action to be taken to comply with this section. In such county, there shall be a new county board of education elected in a November 2013 special election which shall be called for that purpose and the new county board members shall be elected as provided in Section 37-5-7, Mississippi Code of 1972. No previous board member shall be eligible to serve on the newly elected board. Provided, however, that it shall be the responsibility of the board of supervisors of such county to apportion the countywide school district into five (5) new single member board of education districts which shall be consistent with the supervisors district lines in said county. The board of supervisors of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of supervisors of said county, said new district lines will thereafter be effective for the November 2013 special election. If necessary, the county board of education of said county shall reapportion the board of education districts in accordance with applicable law as soon as practicable after the results of the 2020 decennial census are published and as soon as practicable after every decennial census thereafter. The new county board of education, with the written approval of the Mississippi Department of Education Conservator and the State Board of Education, shall provide for the administrative consolidation of all school districts in the county into one (1) countywide school district on or before July 1 next following the November 2013 election. The new county board of education shall serve as the school board for the county. Any school district affected by the required

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2330

administrative consolidation that does not voluntarily consolidate with the new school district ordered by the county board of education shall be administratively consolidated by the State Board of Education with the countywide school district, to be effective on July 1 following the election of the new county board of education. The State Board of Education shall promptly move on its own motion to administratively consolidate any school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into one (1) countywide district by July 1 following the election of the new county board of education. All affected school districts shall comply with any consolidation order issued by the county board of education or the State Board of Education, as the case may be, on or before July 1 following the election of the new county board of education.

(2) On July 1 following the election of the new county board of education, the former county board of education and the former board of trustees of any municipal separate, or special municipal separate school district located in such county shall be abolished. All real and personal property which is owned or titled in the name of a school district located in such county shall be transferred to the new reorganized school district of the county in which such school district is located. The Mississippi Department of Education Conservator and the State Board of Education shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor county board of education. The successor county board of education shall appoint the new county superintendent of education for the reorganized school district. The county superintendent of education of said reorganized school district shall not be elected but shall thereafter be appointed by the successor county board of education in the manner provided in

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2330

Section 37-9-25. The superintendents of the former under-performing school districts located in the county shall not be eligible for appointment as the new superintendent. The selection of the appointed county superintendent of education and the assistant superintendent of education in the central administration office of the successor countywide school district shall be the responsibility of the successor county board of education with the approval of the Mississippi Department of Education Conservator and the State Board of Education. No such administratively consolidated school district shall have more than one (1) assistant superintendent of education. It shall be the responsibility of the successor county board of education, with approval of the Mississippi Department of Education Conservator and the State Board of Education, to prepare and approve the budget of the new reorganized districts, and the county board of education may use staff from the former school districts to prepare the budget. Any proposed order of the successor county board of education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be submitted and approved by the State Board of Education. The finding of the State Board of Education shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation. Any person or school district aggrieved by an order of the successor county school board of education pursuant to the required administrative consolidation may appeal therefrom to the State Board of Education within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Such appeal shall be de novo, and the finding of the State Board of Education upon such question shall be final and conclusive for the purpose of the approval or disapproval of the action by said county board of education.



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(3) When any school district in such county is abolished under the provisions of this section, the abolition thereof shall not impair or release the property of such former school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished from year to year according to the terms of such indebtedness until same shall be fully paid.

(4) In the administratively consolidated countywide school district created under this section, the ad valorem tax rate shall be determined as set forth under Section 37-57-1 et seq.

(5) Nothing in this section shall be construed to require or restrict the closing of any school or school facility, unless such facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in a county pursuant to this section. When the orders of the successor county board of education adopting the boundaries of the successor countywide school district have been entered and are final, as approved by the State Board of Education, the new district lines shall be submitted by the State Board of Education with the assistance of the Attorney General to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines are precleared or approved, the State Board of Education shall formally declare the



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2330

new lines as the new boundaries of the consolidated countywide school district.

**SECTION 2.** Section 37-7-103, Mississippi Code of 1972, is amended as follows:

37-7-103. From and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish such existing district, or to reorganize, change or alter the boundaries of any such district. In addition thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same, and with the consent of the school board of the school district involved, may detach territory from such school district and annex same to an adjoining district. Provided, however, that the consent of the school board of the school districts involved in implementing the provisions of Section 37-7-104, Mississippi Code of 1972, shall not be required for the administrative consolidation of such school districts pursuant to the order of the State Board of Education.

**SECTION 3.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 4.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2339

**Description:** State Board of Funeral Service; extend repealer and amend various licensing laws.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No



*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (S) Referred To Business and Financial Institutions
- 2 02/16 (S) Title Suff Do Pass
- 3 03/07 (S) Amended
- 4 03/07 (S) Passed As Amended {Vote}
- 5 03/12 (S) Transmitted To House
- 6 03/14 (H) Referred To Public Health and Human Services
- 7 03/22 (H) Title Suff Do Pass
- 8 04/04 (H) Amended
- 9 04/04 (H) Passed As Amended {Vote}
- 10 04/04 (H) Motion to Reconsider Entered (Myers, Mims, Barker)
- 11 04/05 (H) Motion to Reconsider Tabled
- 12 04/05 (H) Returned For Concurrence
- 13 04/10 (S) Concurred in Amend From House {Vote}
- 14 04/17 (S) Enrolled Bill Signed
- 15 04/17 (H) Enrolled Bill Signed
- 16 04/23 Approved by Governor

**Amendments:**

  [S] Amendment No 1 **Adopted** *Voice Vote*

  [H] Amendment No 1 **Adopted** {Vote}

  Amendment Report for Senate Bill No. 2339

**Code Section:** A 073-0011-0033, A 073-0011-0041, A 073-0011-0043, R 073-0011-0045, R 073-0011-0047, A 073-0011-0049, A 073-0011-0051, A 073-0011-0053, A 073-0011-0055, A 073-0011-0056, R 073-0011-0057, R 073-0011-0057.1, A 073-0011-0058, R 073-0011-0059, R 073-0011-0061, R 073-0011-0063, R 073-0011-0065, R 073-0011-0067, A 073-0011-0069

----- Additional Information -----

*Senate Committee:* Business and Financial Institutions

*House Committee:* Public Health and Human Services

*Principal Author:* Ward

*Additional Authors:* Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2339

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Ward, Jackson (11th)

To: Business and Financial  
Institutions

SENATE BILL NO. 2339  
(As Sent to Governor)

AN ACT TO AMEND SECTION 73-11-33, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE SECTIONS OF LAW WHICH CREATE THE STATE BOARD OF FUNERAL SERVICE AND PRESCRIBE ITS DUTIES AND POWERS; TO AMEND SECTION 73-11-41, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "FIRST CALL" AND "MORTUARY SERVICE ESTABLISHMENT" AS USED IN THE ACT; TO AMEND SECTION 73-11-43, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT, UPON THE EXPIRATION OF HIS TERM OF OFFICE, A MEMBER OF THE BOARD OF FUNERAL SERVICE MAY CONTINUE TO SERVE UNTIL HIS SUCCESSOR HAS BEEN APPOINTED AND CONFIRMED; TO REENACT SECTIONS 73-11-45 AND 73-11-47, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 73-11-49, MISSISSIPPI CODE OF 1972, TO REVISE THE RULEMAKING AUTHORITY OF THE BOARD OF FUNERAL SERVICE; TO AMEND SECTION 73-11-51, MISSISSIPPI CODE OF 1972, TO DELETE THE PROVISION AUTHORIZING A PERSON WHO IS LICENSED IN ANOTHER STATE TO PRACTICE FUNERAL SERVICE OR DIRECTING IN MISSISSIPPI IN ACCORDANCE WITH RECIPROCAL AGREEMENTS WITH OTHER STATES; TO AMEND SECTION 73-11-53, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD TO ESTABLISH A TRAINEE AND APPRENTICESHIP PROGRAM AND TO PROHIBIT CERTAIN ACTS OF RESIDENT TRAINEES; TO AMEND SECTION 73-11-55, MISSISSIPPI CODE OF 1972, TO ESTABLISH CERTAIN CLASSIFICATIONS FOR THE FUNERAL ESTABLISHMENT LICENSE; TO AMEND SECTION 73-11-56, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A CERTIFICATION FEE; TO REENACT SECTIONS 73-11-57 AND 73-11-57.1, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 73-11-58, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR DISPOSITION OF A BODY WHERE NO WRITTEN AUTHORIZATION WAS LEFT BY THE DECEDENT; TO REENACT SECTIONS 73-11-59, 73-11-61, 73-11-63, 73-11-65 AND 73-11-67, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 73-11-69, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CREMATORY MAY BE CONSTRUCTED ON OR ADJACENT TO ANY CEMETERY OR FUNERAL ESTABLISHMENT, OR AT ANY OTHER LOCATION CONSISTENT WITH LOCAL ZONING REGULATIONS; TO AMEND SECTION 73-11-71, MISSISSIPPI CODE OF 1972, TO DELETE THE REPEALER IN ORDER TO CONFORM TO A PREVIOUS SECTION; TO CREATE A NEW SECTION TO PROVIDE PROCEDURAL REQUIREMENTS FOR THE REMOVAL OF DEAD BODIES BY LICENSEES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-11-33, Mississippi Code of 1972, is amended as follows:

73-11-33. Sections 73-11-41 through 73-11-71, which create the State Board of Funeral Service and prescribe its duties and powers, shall stand repealed as of July 1, 2017.

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**SECTION 2.** Section 73-11-41, Mississippi Code of 1972, is amended as follows:

73-11-41. The following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Alternative container" is an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed wood, composition materials (with or without an outside covering) or like materials.

(b) "Board" means the State Board of Funeral Service of the State of Mississippi as created by Section 73-11-43, or any successor thereof.

(c) "Branch establishment" means an auxiliary facility or division of a main funeral establishment licensed under this chapter that is within seventy-five (75) miles of the main facility.

(d) "Casket" is defined as a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric which may or may not be combustible.

(e) "Cremation" means a two-part procedure whereby a dead human body or body parts shall be reduced by direct flame to residue which includes bone fragments and the pulverization of said bone fragments to coarse powdery consistency.

(f) "Crematory" is defined as any person, partnership or corporation that performs cremation. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules and regulations adopted by the board.



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(g) "Certified crematory operator" means an individual who has completed the certification program as approved by the board.

(h) "Crematory operator" means the legal entity that operates a crematory and performs cremations.

(i) "Direct cremation" means a disposition of human remains by cremation without formal viewing, visitation or ceremony with the body present.

(j) "Embalming" means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

(k) "First call" means the beginning of the relationship between the consumer and the licensed funeral director, funeral service practitioner and/or funeral establishment to take charge of a dead human body and/or have the body prepared for burial or disposition by embalming, cremation or another method.

(l) "Funeral establishment" means a fixed place or premise duly licensed by the board that is devoted to or used in the immediate post-death activities of custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of the human dead; or maintained or held out to the public by advertising or otherwise as such, for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(m) "Licensee" means a person or entity who holds a license issued by the board.

(n) "License for funeral establishment" means a license issued to a place or premise devoted to or used in the immediate post-death activities of transportation, custody, shelter, care,

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preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of human dead; or maintained for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(o) "License for the practice of funeral directing" means the license given to a person engaging in the "practice of funeral service" who is not engaged in the practice of embalming.

(p) "License for the practice of funeral service" means the license given to a person engaging in the "practice of funeral service," including the practice of embalming.

(q) "Practice of funeral service" means:

- (i) Providing shelter, care and custody of the human dead;
- (ii) Conducting immediate post-death activities;
- (iii) Preparing of the human dead by embalming or other methods for burial or other disposition;
- (iv) Being responsible for the transportation of the human dead, bereaved relatives and friends;
- (v) Making arrangements, financial or otherwise, for the providing of such services;
- (vi) The sale of funeral merchandise; or
- (vii) The practice or performance of any function of funeral directing and/or embalming as presently known, including those stipulated herein.

This definition shall not include persons or corporations engaging only in the preneed sale of funeral merchandise or service.

(r) "Mortuary service establishment" means a place of business where dead human bodies are embalmed or otherwise

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2339

prepared or held for burial, including the transportation of the bodies.

(s) "Resident trainee" means a person who is preparing to become licensed for the practice of funeral service or funeral directing and who is serving under the supervision and instruction of a person duly licensed for the practice of funeral service or funeral directing in this state.

(t) "Retort" means an enclosed space within which the cremation process takes place.

(u) "Trade embalmer" means an embalmer who does embalming for a licensed funeral establishment.

**SECTION 3.** Section 73-11-43, Mississippi Code of 1972, is amended as follows:

73-11-43. There is \* \* \* created the State Board of Funeral Service which shall consist of seven (7) members, one (1) funeral service licensee and one (1) funeral director licensee to be appointed from each Mississippi Supreme Court district. Three (3) members shall have been licensed for the practice of funeral service under this chapter for five (5) consecutive years and/or have had at least five (5) consecutive years' experience as a funeral director and embalmer in this state immediately preceding his appointment. Three (3) members shall have been licensed for the practice of funeral directing under this chapter for five (5) consecutive years and/or have had at least five (5) consecutive years' experience as a funeral director immediately preceding his appointment. One (1) member shall be a public member and be appointed from the public at large. The members of the board shall be appointed by the Governor with the advice and consent of the Senate. All appointments shall be for terms of four (4) years from the expiration date of the previous term. Upon the expiration of his term of office, a board member may continue to serve until his successor has been appointed and confirmed. No board member shall serve more than two (2) consecutive full terms.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2339

Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position which becomes vacant, subject to the advice and consent of the Senate at the next regular session of the Legislature. Appointments for vacancies in office, except those from the public at large, may be made from a joint list of four (4) qualified persons, two (2) each submitted by the Mississippi Funeral Directors Association and the Mississippi Funeral Directors and Morticians Association. Nothing in this chapter or any other statute shall preclude the members of the State Embalming Board from serving as members of the State Board of Funeral Service.

**SECTION 4.** Section 73-11-45, Mississippi Code of 1972, is reenacted as follows:

73-11-45. The members of the board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other state officers, which oath shall be administered by properly qualified authority and shall be filed in the Office of the Secretary of State.

**SECTION 5.** Section 73-11-47, Mississippi Code of 1972, is reenacted as follows:

73-11-47. The board shall hold not less than two (2) meetings annually for the purpose of conducting the business of the board and for examining applications for licenses. Four (4) or more members shall comprise a quorum. Any member who shall not attend two (2) consecutive meetings of the board shall be subject to removal by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

**SECTION 6.** Section 73-11-49, Mississippi Code of 1972, is amended as follows:

73-11-49. (1) The board is authorized to select from its own membership a chairman, vice chairman and secretary-treasurer.



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Election of officers shall be held at the first regularly scheduled meeting of the fiscal year.

(2) All members of the board shall be reimbursed for their necessary traveling expenses and mileage incident to their attendance upon the business of the board, as provided in Section 25-3-41, and shall receive a per diem as provided in Section 25-3-69 for every day actually spent upon the business of the board, not to exceed twenty (20) days per year unless authorized by a majority vote of the board.

(3) All monies received by the board shall be paid into a special fund in the State Treasury to the credit of the board and shall be used by the board for paying the traveling and necessary expenses and per diem of the members of the board while on board business, and for paying other expenses necessary for the operation of the board in carrying out and involving the provisions of this chapter.

(4) The board shall employ an administrator of the board, who shall have complete supervision and be held responsible for the direction of the office of the board, shall have supervision over field inspections and enforcement of the provisions of this chapter, shall have such other duties as may be assigned by the board, shall be responsible and answerable to the board. The board may employ such other clerical assistants and employees as may be necessary to carry out the provisions of this chapter, and the terms and conditions of such employment shall be determined by the board in accordance with applicable state law and rules and regulations of the State Personnel Board.

(5) The board, when it shall deem necessary, shall be represented by an assistant attorney general duly appointed by the Attorney General of this state, and may also request and receive the assistance of other state agencies and county and district attorneys, all of whom are authorized to provide the assistance requested.



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(6) The board shall have subpoena power in enforcing the provisions of this chapter.

(7) The board shall adopt and promulgate rules and regulations consistent with law concerning, but not limited to, trainees, apprentices and preceptors, practitioners of funeral service, funeral directors, embalmers and funeral establishments and branches. These rules and regulations shall not become effective unless promulgated and adopted in accordance with the provisions of the Mississippi Administrative Procedures Law (Section 25-43-1.101 et seq.). \* \* \*

(8) The board may designate the administrator to perform inspections under this chapter, may employ an individual to perform such inspections or may contract with any other individual or entity to perform such inspections. Any individual or entity that performs such inspections shall have the right of entry into any place in which the business or practice of funeral service and/or funeral directing is carried on or advertised as being carried on, for the purpose of inspection, for the investigation of complaints coming before the board and for such other matters as the board may direct.

(9) The board \* \* \* shall not adopt any rule or regulation requiring dead bodies to be embalmed except as required by \* \* \* rule or otherwise by the State Department of Health.

**SECTION 7.** Section 73-11-51, Mississippi Code of 1972, is amended as follows:

73-11-51. (1) No person shall engage in the business or practice of funeral service, including embalming, and/or funeral directing or hold himself out as transacting or practicing or being entitled to transact or practice funeral service, including embalming, and/or funeral directing in this state unless duly licensed under the provisions of this chapter.

(2) The board is authorized and empowered to examine applicants for licenses for the practice of funeral service and

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funeral directing and shall issue the proper license to those persons who successfully pass the applicable examination and otherwise comply with the provisions of this chapter.

(3) To be licensed for the practice of funeral directing under this chapter, a person must furnish satisfactory evidence to the board that he or she:

- (a) Is at least eighteen (18) years of age;
- (b) Has a high school diploma or the equivalent thereof;
- (c) Has served as a resident trainee for not less than twenty-four (24) months under the supervision of a person licensed for the practice of funeral service or funeral directing in this state;
- (d) Has successfully passed a written and/or oral examination as prepared or approved by the board; and
- (e) Is of good moral character.

(4) To be licensed for the practice of funeral service under this chapter, a person must furnish satisfactory evidence to the board that he or she:

- (a) Is at least eighteen (18) years of age;
- (b) Has a high school diploma or the equivalent thereof;
- (c) Has successfully completed twelve (12) months or more of academic and professional instruction from an institution accredited by the United States Department of Education for funeral service education and have a certificate of completion from an institution accredited by the American Board of Funeral Service Education or any other successor recognized by the United States Department of Education for funeral service education;
- (d) Has served as a resident trainee for not less than twelve (12) months, either before or after graduation from an accredited institution mentioned above, under the supervision of a

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person licensed for the practice of funeral service in this state and in an establishment licensed in this state;

(e) Has successfully passed the National Conference of Funeral Examiners examination and/or such other examination as approved by the board; and

(f) Is of good moral character.

(5) All applications for examination and license for the practice of funeral service or funeral directing shall be upon forms furnished by the board and shall be accompanied by an examination fee, a licensing fee and a nonrefundable application fee in amounts fixed by the board in accordance with Section 73-11-56. The fee for an initial license, however, may be prorated in proportion to the period of time from the date of issuance to the date of biennial license renewal prescribed in subsection (8) of this section. All applications for examination shall be filed with the board office at least sixty (60) days before the date of examination. A candidate shall be deemed to have abandoned the application for examination if he does not appear on the scheduled date of examination unless such failure to appear has been approved by the board.

(6) The practice of funeral service or funeral directing must be engaged in at a licensed funeral establishment, at least one (1) of which is listed as the licensee's place of business; and no person, partnership, corporation, association or other organization shall open or maintain a funeral establishment at which to engage in or conduct or hold himself or itself out as engaging in the practice of funeral service or funeral directing until such establishment has complied with the licensing requirements of this chapter. A license for the practice of funeral service or funeral directing shall be used only at licensed funeral establishments; however, this provision shall not prevent a person licensed for the practice of funeral service or funeral directing from conducting a funeral service at a church, a

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residence, public hall, lodge room or cemetery chapel, if such person maintains a fixed licensed funeral establishment of his own or is in the employ of or an agent of a licensed funeral establishment.

(7) Any person holding a valid, unrevoked and unexpired nonreciprocal license in another state or territory having requirements greater than or equal to those of this state as determined by the board may apply for a license to practice in this state by filing with the board a certified statement from the secretary of the licensing board of the state or territory in which the applicant holds his license certifying to his qualifications and good standing with that board. He/she must also successfully pass a written and/or oral examination on the Mississippi Funeral Service licensing law and rules and regulations as prepared or approved by the board, and must pay a nonrefundable application fee set by the board. If the board finds that the applicant has fulfilled aforesaid requirements and has fulfilled substantially similar requirements of those required for a Mississippi licensee, the board shall grant such license upon receipt of a fee in an amount equal to the renewal fee set by the board for a license for the practice of funeral service or funeral directing, as the case may be, in this state. The board may issue a temporary funeral service or funeral directing work permit before a license is granted, before the next regular meeting of the board, if the applicant for a reciprocal license has complied with all requirements, rules and regulations of the board. The temporary permit will expire at the next regular meeting of the board.

(8) (a) Except as provided in Section 33-1-39, any person holding a license for the practice of funeral service or funeral directing may have the same renewed for a period of two (2) years by making and filing with the board an application on or before the due date. Payment of the renewal fee shall be in an amount



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set by the board in accordance with Section 73-11-56. The board shall mail the notice of renewal and the due date for the payment of the renewal fee to the last-known address of each licensee at least thirty (30) days before that date. It is the responsibility of the licensee to notify the board in writing of any change of address. An application will be considered late if the application and proper fees are not in the board's office or postmarked by the due date. Failure of a license holder to receive the notice of renewal shall not exempt or excuse a license holder from the requirement of renewing the license on or before the license expiration date.

(b) If the renewal fee is not paid on or postmarked by the due date, the license of such person shall by operation of law automatically expire and become void without further action of the board. The board may reinstate such license if application for licensure is made within a period of five (5) years, upon payment of the renewal fee for the current year, all renewal fees in arrears, and a reinstatement fee. After a period of five (5) years, the licensee must make application, pay the current renewal fee, all fees in arrears, and pass a written and/or oral examination as prepared or approved by the board.

(9) No license shall be assignable or valid for any person other than the original licensee.

(10) The board may, in its discretion, if there is a major disaster or emergency where human death is likely to occur, temporarily authorize the practice of funeral directing and funeral service by persons licensed to practice in another state but not licensed to practice in this state. Only persons licensed in this state, however, may sign death certificates.

\* \* \*

(11) Any funeral service technology or mortuary science program accredited by the American Board of Funeral Service Education in the State of Mississippi, as well as students



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enrolled in such a program, shall be exempt from licensing under this chapter when embalming or otherwise preparing a deceased human body for disposition as part of a student practicum experience, when the student is directly supervised by an instructor or preceptor who holds a current funeral service license. This exemption shall apply to practicum experiences performed at an accredited institution of funeral service technology or mortuary science program or at a duly licensed funeral establishment or commercial mortuary service. Nothing in this subsection shall be construed to allow any funeral service technology or mortuary science program, or those students enrolled in such a program, to engage in practicum experiences for remuneration.

(12) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

**SECTION 8.** Section 73-11-53, Mississippi Code of 1972, is amended as follows:

73-11-53. (1) The State Board of Funeral Service is authorized to establish a trainee and apprenticeship program whereby persons desiring to apprentice as a funeral service or funeral director trainee may be issued a resident traineeship certificate to practice funeral directing or funeral service under the direct on-premises supervision of a sponsoring Mississippi licensed funeral director or funeral service practitioner.

(2) A person desiring to become a resident trainee for the practice of funeral service or funeral directing shall make application to the board. Such application shall be verified by the licensee under whom the applicant is serving, and shall be accompanied by a nonrefundable application fee in an amount set by the board in accordance with Section 73-11-56. When the board is satisfied as to the qualifications of an applicant, it shall issue a certificate of resident traineeship.

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(3) The board shall have the power to suspend or revoke a certificate of a resident traineeship for violation of any provision of this chapter.

(4) A resident trainee must serve the apprenticeship in a funeral establishment that is licensed by the State of Mississippi and the preceptor must be a Mississippi licensed funeral service practitioner or funeral director who is employed by a Mississippi licensed funeral establishment and actively practicing within the State of Mississippi. The funeral service trainee and apprenticeship program shall be completed within no less than twelve (12) months or more than eighteen (18) months under the direct supervision of a funeral director or funeral service licensee of the board. The funeral director trainee and apprenticeship program shall be completed within no less than twenty-four (24) months or more than thirty (30) months under the direct supervision of a funeral director or funeral service licensee of the board. The board may not adopt any rule that shall require a trainee for funeral directing or funeral service to be employed more than sixty-four (64) hours per month.

(5) A resident trainee may serve under the supervision of more than one (1) preceptor under conditions established by board rules and regulations. The board may also adopt rules that will allow training at more than one (1) funeral establishment under special circumstances.

(6) A resident traineeship certificate shall be valid for one (1) year. The board may renew a resident traineeship certificate if the trainee applies for renewal on a form provided by the board, shows that the training activity continues to satisfy applicable requirements and pays a renewal fee as set by the board. The fee and application will be considered late if the fee and application are not in the office or show a postmark of December 31. Applications received late may be reinstated by the payment of a renewal fee, a reinstatement fee and other applicable

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fees. Failure to receive a renewal notice does not exempt a resident trainee from the required renewal of his/her traineeship.

(7) A resident trainee shall not advertise or hold himself out as a funeral director, funeral service practitioner, embalmer or use any other title or abbreviation indicating that the trainee is a funeral director, funeral service practitioner or embalmer. A resident trainee does not have the rights and duties of a funeral director or funeral service licensee and is only authorized to act under the direct supervision of the approved preceptor.

**SECTION 9.** Section 73-11-55, Mississippi Code of 1972, is amended as follows:

73-11-55. (1) No person or party shall conduct, maintain, manage or operate a funeral establishment or branch thereof unless a license for each such establishment has been issued by the board and is conspicuously displayed in such funeral establishment. In case of funeral services held in any private residence, church, cemetery, cemetery chapel, cemetery facility, or lodge hall, no license shall be required.

(2) There shall be four (4) funeral establishment license classifications:

- (a) Full-service funeral establishment;
- (b) Branch establishment;
- (c) Mortuary service establishment; and
- (d) Crematory establishment.

(3) To be licensed as a funeral establishment, a place or premise must be at a fixed and specified address or location and must be used for immediate post-death activities, whether used for the custody, shelter, care, preparation and/or embalming of the human dead. Every funeral establishment shall be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee. The licensee in charge and the licensee with personal supervisory

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responsibilities need not be the same licensee. Each licensed funeral establishment shall be inspected at least once during each licensing period. Such inspections may be unannounced. After inspection of a funeral establishment, if the board cites the funeral establishment for failure to comply with any provision of this chapter or a rule or regulation of the board, the funeral establishment shall resolve the violation to the satisfaction of the board and be in full compliance with this chapter and board rules and regulations not later than thirty (30) days after the board files the inspection report.

(4) (a) A funeral establishment where embalming is conducted must contain an embalming room with a sanitary floor, walls and ceiling, adequate sanitary drainage and disposal facilities, including running water and exhaust fans. A full-service funeral establishment must also have an adequate casket and/or vault selection room, holding facilities and proper room or rooms in which rites and ceremonies may be held. A funeral establishment shall be subject to an inspection at least once during a two-year license period. Each new establishment must be inspected before the opening. All portions of each facility licensed under this section shall be kept in a clean and sanitary condition.

(b) (i) A branch establishment must contain an office and/or an arrangement room, and a room for viewing and/or a chapel or proper place for ceremonies. A branch establishment need not meet all requirements specified in paragraph (a) of this subsection and need not be under the personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

(ii) If the branch meets all requirements of a funeral establishment as specified in paragraph (a) of this subsection, such establishment must be under the charge and



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personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

(c) A commercial mortuary service is a funeral establishment that embalms and transports for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public. A mortuary service establishment shall not arrange or conduct a funeral or direct burial. A mortuary service establishment may arrange for and transport dead human bodies for direct cremation purposes only under the following circumstances:

(i) On behalf of a full-service funeral establishment;

(ii) On behalf of a branch funeral establishment;  
or

(iii) At the direction of a public administrator, medical examiner, coroner or any other public official charged with arranging the final disposition of dead human bodies.

(d) A crematory establishment shall have the authority to cremate dead human bodies and to transport dead human bodies to and from the establishment and shall meet the requirements of Section 73-11-69. An establishment licensed only as a crematory establishment is prohibited from the care and preparation of dead human bodies other than by cremating and shall also be prohibited from embalming, making funeral arrangements or cremation arrangements with any person or party that is not licensed by the board, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies or selling funeral merchandise.

(5) Applications for funeral establishment licenses, branch establishment licenses or commercial mortuary service licenses shall be made on blanks furnished by the board and shall be accompanied by a fee in an amount fixed by the board under Section 73-11-56. All establishment licenses shall be issued for a period



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of two (2) years, except initial licenses may be prorated from the date of issuance to the next renewal date.

Renewal funeral establishment and branch establishment license applications and license fees shall be due and payable to the board on or before the expiration date of the license. The board shall mail the notice of renewal and the due date for payment of the renewal fee at least thirty (30) days before that date. Failure of the license holder to receive the notice of renewal shall not exempt or excuse the holder from the requirement of renewing the license on or before the license expiration date.

(6) If the renewal fee is not paid on or postmarked by the due date, the license shall by operation of law automatically expire and become void without further action of the board. All establishments whose licenses have expired under this section may be reinstated by filing with the board an application for reinstatement, submitting to an inspection during which time the licensee in charge of such establishment shall be interviewed by the board or its designee and by paying all renewal fees, a reinstatement fee, and other applicable fees.

(7) No license shall be assignable or transferable or valid for any establishment other than the original licensee. License fees and application fees are nonrefundable.

(8) A license for each new establishment shall not be issued until an inspection has been made, license and inspection fees have been paid, and the licensee in charge and/or owners of such establishment has been interviewed by the board or its designee.

(9) The board is authorized to establish rules and regulations for the issuance of a special funeral establishment work permit.

**SECTION 10.** Section 73-11-56, Mississippi Code of 1972, is amended as follows:

73-11-56. On or before October 1 of each year, the board shall determine the amount of funds that will be required during

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the next ensuing two (2) years to properly administer the laws which the board is directed to enforce and administer and by rule and regulation shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

### Funeral establishment:

Application fee, for a new or change of ownership establishment.....	\$ 500.00
Inspection fee.....	\$ 75.00
Renewal application and licensee fee.....	\$ 300.00
Commercial mortuary service license fee for a new or change of ownership.....	\$ 500.00
Renewal application and licensee fee.....	\$ 300.00
Crematory application fee for a new or change of ownership.....	\$ 500.00
Renewal application and license fee.....	\$ 300.00
Special work permit.....	\$ 150.00

### Funeral service:

Initial application fee.....	\$ 50.00
Reciprocal application fee.....	\$ 200.00
Renewal license and application fee.....	\$ 125.00
Work permit.....	\$ 50.00

### Funeral director:

Initial application fee.....	\$ 50.00
Reciprocal application fee.....	\$ 200.00
Renewal license and application fee.....	\$ 100.00
Work permit.....	\$ 50.00

### Certified crematory operator:

Initial application fee.....	\$ 100.00
Renewal license and application fee.....	\$ 100.00

### Resident trainee certificate:

Funeral service application fee.....	\$ 50.00
Funeral director application fee.....	\$ 50.00
Funeral service renewal application fee.....	\$ 50.00

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Funeral director renewal application fee.....\$ 50.00

Other fees:

Certification fee.....\$ 50.00

Duplicate license fee.....\$ 25.00

Reinstatement of lapsed license fee, equal to the amount of the applicable license fee (or the amount of the application fee for the resident trainees).

Late fee equal to the amount of the applicable license fee (or the amount of the application fee for the resident trainees).

Public records of the board per page.....\$ 1.00

All licenses will have a reinstatement and late fee added to the renewal fee if the payment is not in the board's office or postmarked by the due date.

At least thirty (30) days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee therefor.

**SECTION 11.** Section 73-11-57, Mississippi Code of 1972, is reenacted as follows:

73-11-57. (1) The board, upon satisfactory proof at proper hearing and in accordance with the provisions of this chapter and the regulations of the board, may suspend, revoke, or refuse to issue or renew any license under this chapter, reprimand or place the holder of a license on a term of probation, and/or take any other action in relation to a license as the board may deem proper under the circumstances upon any of the following grounds:

(a) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

(b) The erroneous issuance of a license to any person;

(c) The conviction of a felony by any court in this state or any federal court or by the court of any other state or territory of the United States; having been convicted of or pled

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guilty to a felony in the courts of this state or any other state, territory or country which would prevent a person from holding elected office. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere;

(d) The practice of embalming under a false name or without a license for the practice of funeral service;

(e) The impersonation of another funeral service or funeral directing licensee;

(f) The permitting of a person other than a funeral service or funeral directing licensee to make arrangements for a funeral and/or form of disposition;

(g) Violation of any provision of this chapter or any rule or regulation of the board;

(h) Having had a license for the practice of funeral service or funeral directing suspended or revoked in any jurisdiction, having voluntarily surrendered his license in any jurisdiction, having been placed on probation in any jurisdiction, having been placed under disciplinary order(s) or other restriction in any manner for funeral directing and/or funeral service, or operating a funeral establishment (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(i) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or when death is imminent; if the person solicited has made known a desire not to receive the communication, or if the solicitation involves coercion, duress or harassment, or if the solicitation takes place at the residence of the client or prospective client and is uninvited by the client or prospective client and has not been previously agreed to by the

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client or prospective client; however, this shall not be deemed to prohibit general advertising;

(j) Employment directly or indirectly of any apprentice, agent, assistant, employee, or other person, on a part-time or full-time basis or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

(k) Failure to give full cooperation to the board and/or its designees, agents or other representatives in the performance of official duties of the board. Such failure to cooperate includes, but is not limited to:

(i) Not furnishing any relevant papers or documents requested by or for the board;

(ii) Not furnishing, in writing, an adequate explanation covering the matter contained in a complaint filed with the board;

(iii) Not responding without cause to subpoenas issued by the board, whether or not the licensee is the party charged in any proceeding before the board;

(iv) Not reasonably providing access, as directed by the board for its authorized agents or representatives seeking to perform reviews or inspections at facilities or places utilized by the license holder in the practice of funeral service or funeral directing and/or in performing any other activity regulated by the board under this chapter;

(v) Failure to provide information within the specified time allotted and as required by the board and/or its representatives or designees;

(vi) Failure to cooperate with the board or its designees or representatives in the investigation of any alleged misconduct or interfering with a board investigation by willful misrepresentation of facts;



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(vii) Deceiving or attempting to deceive the board regarding any matter under investigation, including altering or destroying any records; and

(viii) Failure, without good cause, to cooperate with any request by the board to appear before it;

(l) Knowingly performing any act that in any way assists an unlicensed person to practice funeral service or funeral directing;

(m) Knowingly making a false statement on death certificates;

(n) Conviction of a crime involving moral turpitude;

(o) Violating any statute, ordinance, rule or regulation of the state or any of its boards, agencies or political subdivisions affecting the registration of deaths or the handling, custody, care or transportation of dead human bodies; or

(p) Unprofessional conduct in the practice of funeral service or funeral directing which includes, but is not limited to:

(i) Retaining a dead human body for the payment of a fee for the performance of services that are not authorized;

(ii) Knowingly performing any act which in any way assists an unlicensed person to practice funeral service or funeral directing;

(iii) Being guilty of any dishonorable conduct likely to deceive, defraud or harm the public;

(iv) Any act or omission in the practice of funeral service or directing which constitutes dishonesty, fraud or misrepresentation with the intent to benefit the licensee, another person or funeral establishment, or with the intent to substantially injure another person, licensee or funeral establishment; or

(v) Any act or conduct, whether the same or of a different character than specified above, which constitutes or

demonstrates bad faith, incompetency or untrustworthiness; or dishonest, fraudulent or improper dealing; or any other violation of the provisions of this chapter, the rules and regulations established by the board or any rule or regulation promulgated by the Federal Trade Commission relative to the practice of funeral service or funeral directing.

(2) Any person, including a member of the board, may initiate a complaint against a licensee of the board by filing with the board a written complaint on a form prescribed by the board.

(a) Upon receipt of a properly verified complaint, the board shall send a copy of the complaint to the affected licensee by certified mail to the address of such licensee appearing of record with the board. The licensee shall answer the complaint in writing within twenty (20) days after receipt of the complaint. The licensee shall mail a copy of his, her or its response to the board and the complainant. Upon receipt of the licensee's response or lapse of twenty (20) days, the board is authorized to investigate a complaint that appears to show the existence of any of the causes or grounds for disciplinary action as provided in Section 73-11-57. Upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, the board may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges that a violation of this chapter has occurred. The board shall order a hearing for the licensee to appear and show cause why he/she should not be disciplined for a violation of this chapter.

(b) The board shall give the complainant and the affected licensee twenty (20) days' notice of any hearing upon a complaint. Such notice shall be by United States certified mail.

(c) Any party appearing before the board may be accompanied by counsel.

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(d) Before commencing a hearing, the chairman or designee of the board shall determine if all parties are present and ready to proceed. If the complainant fails to attend a hearing without good cause shown, the complaint shall be dismissed summarily and all fees and expenses of convening the hearing shall be assessed to, and paid by, the complainant. If any affected licensee fails to appear for a hearing without good cause shown, such licensee shall be presumed to have waived his right to appear before the board and be heard.

(e) Upon the chair's determination that all parties are ready to proceed, the chair or designee shall call the hearing to order and the complainant and the licensee may give opening statements. The board may order the sequestration of nonparty witnesses.

(f) The complainant shall then present his, her or its complaint. The licensee, any counsel and any member or designee of the board may ask questions of witnesses.

(g) The licensee shall then present his, her or its case in rebuttal. The complainant, any counsel and any member or designee of the board may ask questions of witnesses.

(h) At the completion of the evidence, all parties may give closing statements.

(i) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward the decision to the last-known business or residence address of the parties.

(3) The board, on its own motion, may file a formal complaint against a licensee.

(4) The board may temporarily suspend a license under this chapter without any hearing, simultaneously with the institution of proceedings under this section, if it finds that the evidence

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in support of the board's determination is clear, competent and unequivocal and that the licensee's continuation in practice would constitute an imminent danger to public health and safety.

(5) The board may, upon satisfactory proof that the applicant or licensee has been guilty of any of the offenses above enumerated, take the action authorized by this section against an applicant or licensee of the board upon a majority vote of the board members, after a hearing thereon. The board is vested with full power and authority to hold and conduct such hearings, compel the attendance of witnesses and the production of books, records and documents, issue subpoenas therefor, administer oaths, examine witnesses, and do all things necessary to properly conduct such hearings. The board may waive the necessity of a hearing if the person accused of a violation admits that he has been guilty of such offense. Any person who has been refused a license or whose license has been revoked or suspended may, within thirty (30) days after the decision of the board, file with the board a written notice stating that he feels himself aggrieved by such decision and may appeal therefrom to the circuit court of the county and judicial district of residence of the person, or if the person is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County. The circuit court shall determine the action of the board was in accord or consistent with law, or was arbitrary, unwarranted or an abuse of discretion. The appeal shall be perfected upon filing notice of the appeal with the circuit court and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the board. An appeal from the circuit court judgment or decree may be reviewed by the Supreme Court as is provided by law for other appeals. An appeal of a decision or order of the board does not act as a supersedeas.

(6) In addition to any other power that it has, the board may, upon finding that an applicant or licensee has committed any



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of the violations listed in Section 73-11-57(1), impose a monetary penalty as follows:

(a) For the first violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than Five Hundred Dollars (\$500.00).

(b) For the second violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than One Thousand Dollars (\$1,000.00).

(c) For the third and any subsequent violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than Five Thousand Dollars (\$5,000.00).

(d) For any violation of any of the subparagraphs of subsection (1) of this section, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation or suspension, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

(7) The power and authority of the board to assess and levy such monetary penalties hereunder shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(8) A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section under the same conditions as a right of appeal is provided elsewhere for appeals from an adverse ruling, order or decision of the board.

(9) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal shall have expired.

(10) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the



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expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the licensee elects.

With the exception of subsection (5)(d) of this section, monetary penalties collected by the board under this section shall be deposited in the State Treasury to the credit of the State Board of Funeral Service. Any monies collected by the board under subsection (5)(d) of this section shall be deposited into the special fund operating account of the board.

(11) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, or if the licensee is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(12) In any administrative or judicial proceeding in which the board prevails, the board shall have the right to recover reasonable attorney fees.

(13) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance

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with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 12.** Section 73-11-57.1, Mississippi Code of 1972, is reenacted as follows:

73-11-57.1. The State Board of Funeral Service may revoke, refuse to renew, suspend or place on probation the license of a funeral home establishment or funeral director, or both, if the funeral home or funeral director accepts funds for a preneed funeral contract or other prepayment of funeral expenses without a registration to sell preneed funeral contracts; or is registered to sell preneed funeral contracts and fails to deposit the funds in trust or to timely remit premium payments from consumers to the insurer as provided in Section 75-63-59 and Section 75-63-61, respectively.

The State Board of Funeral Service shall make written notification to the Secretary of State of all license suspensions and revocations issued by the board as well as written notification for all new licenses issued by the board. The Secretary of State shall make written notification to the board of all registration suspensions, revocations, orders of cease and desist, and administrative penalties imposed by the Secretary of State under Article 3, Chapter 11, Title 73, Mississippi Code of 1972.

**SECTION 13.** Section 73-11-58, Mississippi Code of 1972, is amended as follows:

73-11-58. (1) If a decedent has left no written authorization for the cremation and/or disposition of the decedent's body as permitted by law, any of the following \* \* \* persons, in the order of priority listed below, may authorize any

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lawful manner of disposition of the decedent's body by completion of a written instrument:

(a) The person designated by the decedent as authorized to direct disposition pursuant to Public Law No. 109-163, Section 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died during military service, as provided in 10 USC Section 1481(a)(1) through (8), in any branch of the United States Armed Forces, United States Reserve Forces or National Guard.

(b) The surviving spouse.

(c) A surviving child who is at least eighteen (18) years of age \* \* \*.

(d) A grandchild who is at least eighteen (18) years of age.

(e) Either surviving parent.

(f) A surviving sibling who is at least eighteen (18) years of age \* \* \*.

(g) A person acting as a representative of the decedent under a signed authorization of the decedent.

(h) The guardian of the person of the decedent at the time of the decedent's death, if a guardian has been appointed.

(i) A person in the class of the next degree of kinship, in descending order, who, under state law, would inherit the decedent's estate if the decedent died intestate and who is at least eighteen (18) years of age \* \* \*.

(j) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

\* \* \*

(k) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with

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making arrangements for the final disposition of the decedent, a representative of the institution may serve as the authorizing agent in the absence of any of the above.

(1) In the absence of any of the above, any person willing to assume responsibility for the cremation and disposition of the decedent.

(m) In the case of indigents or any other individuals whose final disposition is the responsibility of the state or any of its instrumentalities, a public administrator, medical examiner, coroner, state-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

(2) No funeral establishment shall accept a dead human body from any public officer or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains before delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

(3) A person who does not exercise his or her right to dispose of the decedent's body under subsection (1) of this



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section within five (5) days of notification or ten (10) days from the date of the death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section. If, during the aforesaid time period, the funeral director, funeral service practitioner and/or funeral establishment has been provided contrary written consent from members of the same class with the highest priority as to the disposition of the decedent's body, the licensed funeral director or service practitioner or funeral establishment shall act in accordance with the directive of the greatest number of consents received from members of the class. If that number is equal, the funeral director or funeral service practitioner and/or the funeral establishment shall act in accordance with the earlier consent unless the person(s) providing the later consent is granted an order from a court of competent jurisdiction in which the funeral establishment is located.

(4) If no consent for the embalming, cremation or other disposition of a dead human body from any of the relatives or interested persons or institutions listed above in subsection (1) is received within ten (10) days of the decedent's death, the coroner for, or other person designated by, the county in which the funeral establishment is located is authorized to sign the consent authorizing the disposition of the decedent's remains.

(5) If none of the parties listed above in subsection (1) is financially capable of providing for the cremation, embalming or disposition of a dead human body, the coroner for, or other person designated by, the county in which the funeral establishment is located is authorized to sign the consent authorizing the disposition of the decedent's remains.

(6) The licensed funeral director, funeral service practitioner or funeral establishment shall have authority to control the disposition of the remains of a decedent and proceed



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to recover the costs for the disposition when: (a) none of the persons or parties described above in subsection (1)(a) through (1) assume responsibility for the disposition of the remains, and (b) the coroner or other public official designated in subsection (1)(m) fails to assume responsibility for disposition of the remains within seven (7) days after having been given written notice of the facts. Written notice may be made by personal delivery, United States mail, facsimile or transmission. The method of disposition must be in the least costly and most environmentally sound manner that complies with law, and that does not conflict with known wishes of the decedent.

(7) A funeral director, funeral service and/or funeral establishment licensee acting in accordance with this section, or attempting in good faith to act in accordance with this section, shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section.

(8) The liability for the reasonable cost of the final disposition of the remains of the decedent devolves upon the individual or entity authorizing the disposition and/or upon the estate of the decedent and, in cases when the county board of supervisors has the right to control the disposition of the remains under this section, upon the county in which the death occurred.

**SECTION 14.** Section 73-11-59, Mississippi Code of 1972, is reenacted as follows:

73-11-59. Any person, partnership, corporation, association or his or her or its agents or representatives who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of Five Thousand Dollars (\$5,000.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

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**SECTION 15.** Section 73-11-61, Mississippi Code of 1972, is reenacted as follows:

73-11-61. Every funeral director or funeral service licensee shall provide, before the rendering of services, the funeral establishment's current general price list, casket price list, outer container price list, and a statement of goods and services to the person or persons who authorize the services and is responsible for payment of the expenses therefor, in a manner and format as prescribed by the Federal Trade Commission's Funeral Rule of 1984 and any future changes with regard to required disclosures. The general price list must be made available to any person upon request.

**SECTION 16.** Section 73-11-63, Mississippi Code of 1972, is reenacted as follows:

73-11-63. Nothing in this chapter shall be construed to authorize the regulation or licensing of cemeteries or cemetery chapels by the board, except the regulation or licensing of any funeral establishment operated by a cemetery. In addition, nothing in this chapter shall be construed to prevent or interfere with the ceremonies, customs, religious rites or religion of any people, denomination, or sect, or to prevent or interfere with any religious denomination, sect or anybody composed of persons of a denomination, or to prevent or interfere with any church or synagogue from having its committee or committees prepare human bodies for burial or the families, friends or neighbors of deceased persons who prepare and bury their dead without charge.

**SECTION 17.** Section 73-11-65, Mississippi Code of 1972, is reenacted as follows:

73-11-65. Every funeral service or interment, or part thereof, that is conducted in Mississippi must be in the actual charge and under the supervision of a funeral director or funeral service licensee who is licensed under this chapter. However,

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this section shall not prevent a family from burying its own dead without charge.

**SECTION 18.** Section 73-11-67, Mississippi Code of 1972, is reenacted as follows:

73-11-67. (1) Every person, establishment or company not licensed under this chapter that sells caskets at retail shall register annually with the board. The names of registrants under this section shall be made available to any person upon request during the regular business hours of the board. The procedure for conducting a disciplinary proceeding against any casket retailer accused of failing to register with the board, as well as the penal sanctions available to the board, shall be the same as those set forth in Section 73-11-57.

(2) Any person, establishment or company required to register under subsection (1) of this section that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of Sections 75-63-51 through 75-63-75 that are applicable to preneed contracts for funeral services under those sections. For the purposes of this section, the term "preneed contract for caskets" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

**SECTION 19.** Section 73-11-69, Mississippi Code of 1972, is amended as follows:

73-11-69. (1) No person or party shall conduct, maintain, manage or operate a crematory unless a license for each such crematory has been issued by the board and is conspicuously displayed in such crematory.

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(2) The operator of a crematory facility shall issue a certificate of cremation to the family of each person cremated in the facility. In addition, the operator of the crematory facility shall maintain a log of all cremations performed in the facility, and this log shall match the certificates of cremation that have been issued by the facility.

(3) No operator of a crematory facility shall knowingly represent that an urn or temporary container contains the recovered cremated remains of specific decedent or of body parts removed from a specific decedent when it does not. This subsection does not prohibit the making of such a representation because of the presence in the recovered cremated remains of de minimis amounts of the cremated remains of another decedent or of body parts.

(4) The board shall inspect each licensed crematory facility during each licensure period, and at such other times as necessary, to verify that the crematory facility is in compliance with the requirements of this section. Any person who operates a crematory facility in this state without a license, or any person who otherwise violates any provision of this section, is guilty of a felony. Upon conviction for a violation of this section, in addition to any penalty that may be imposed by the court, the board may revoke the person's crematory facility license.

(5) If the retort of a crematory becomes in need of repair, then the operator of the crematory shall notify the board in writing and by telephone within forty-eight (48) hours of discovery of the need to repair, and no cremation shall be made from the time of discovery until satisfactory proof is provided to the board that the repair has been made.

(6) The board may promulgate such rules and regulations as deemed necessary for the proper licensure and regulation of crematory facilities in this state. Such rules and regulations shall include, but not be limited to, the following: crematory



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facility requirements, identification of deceased human beings, cremation process, processing of remains, comingling of human remains, disposition of cremated remains, removal of human remains and proper documentation requirements as prescribed by state agencies.

(7) Any crematory or funeral establishment may dispose of any remains unclaimed by the family after twelve (12) months after cremation by scattering or burial upon a final notification to the next of kin by certified mail to their last-known address.

(8) The crematory retort operator must be a certified crematory operator as defined in Section 73-11-41.

(9) No crematory facility licensed by the board shall be used for the cremation of deceased animals.

(10) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment, or at any other location consistent with local zoning regulations.

**SECTION 20.** Section 73-11-71, Mississippi Code of 1972, is amended as follows:

73-11-71. (1) Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the crematory and placed in a separate container so that the residue may not be comingled with the cremated remains of other persons. Cremated remains of a dead human shall not be divided or separated without the prior written consent from the person entitled to control the disposition of the cremated remains.

(2) Written acknowledgement from the person entitled to control the disposition of the cremated remains shall be obtained by the person with whom arrangements are made for disposition of the remains on a form that includes, but is not limited to, the following information:

"The human body burns with the casket, container or other material in the cremation chamber. Some bone fragments are



not combustible at the incineration temperature and, as a result, remain in the cremation chamber. During the cremation, the contents of the chamber may be moved to facilitate incineration. The chamber is composed of ceramic or other material which disintegrates slightly during each cremation and the produce of that disintegration is commingled with the cremated remains. Nearly all of the contents of the cremation chamber, consisting of the cremated remains, disintegrated chamber material, and small amounts of residue from previous cremations, are removed together and crushed, pulverized or ground to facilitate inurnment or scattering. Some residue remains in the cracks and uneven places of the chamber. Periodically, the accumulation of this residue is removed and interred in a dedicated cemetery property or appropriate area."

The acknowledgment shall be filed and retained for at least three (3) years by the person who disposes of or inters the remains.

\* \* \*

**SECTION 21.** (1) A funeral establishment and its employees, licensees and/or representatives shall not respond to a death call unless properly contacted and requested to so respond. No person or entity subject to regulation under this chapter shall remove or cause to be removed any dead human body from the place of death or take or cause to take custody of a dead human body without the permission of the next of kin or authorized representative, in the order of priority specified in Section 73-11-58, of the deceased.

(2) Dead human bodies may be picked up on first call or removed by a funeral director or funeral service practitioner licensed by the board or under the direction of the licensed funeral director or funeral service practitioner. When a licensed funeral director or funeral service practitioner directs another to make a first call or removal of a dead human body, he accepts,

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in every manner, full responsibility for all aspects of the first call or removal.

(3) A licensed funeral establishment or other licensee of the board shall not embalm or cremate a dead human body without the prior written or oral consent of the next of kin or authorizing agent or representative of the deceased for each body that is placed under its care and custody. In determining who the proper next of kin is or authorizing agent or representative of the deceased, the order of priority is the same as provided in Section 73-11-58.

(4) The licensed funeral establishment or licensee responsible for the embalming or cremation of the dead human body shall create a written record of an oral consent given under this section that includes all of the following:

- (a) The name of the authorizing agent;
  - (b) The relation of the authorizing agent to the deceased;
  - (c) The date and time that consent was given;
  - (d) The name of the person who obtained the consent;
- and
- (e) Any other information required by the board.

**SECTION 22.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2349

**Description:** Highway workstations; increase land acreage that counties may purchase or lease and limit use of eminent domain to acquire.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (S) Referred To County Affairs;Highways and Transportation
- 2 02/29 (S) DR - TSDP: CA To HI
- 3 02/29 (S) DR - TSDP: HI To CA
- 4 02/29 (S) Title Suff Do Pass
- 5 03/07 (S) Passed *{Vote}*
- 6 03/08 (S) Transmitted To House
- 7 03/21 (H) Referred To County Affairs;Transportation
- 8 03/28 (H) DR - TSDP: CA To TR
- 9 04/03 (H) DR - TSDP: TR To CA
- 10 04/03 (H) Title Suff Do Pass
- 11 04/10 (H) Passed *{Vote}*
- 12 04/11 (H) Transmitted To Senate
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/13 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Code Section:** A 065-0007-0091

----- Additional Information -----

**Senate Committee:** County Affairs, Highways and Transportation

**House Committee:** County Affairs, Transportation

**Principal Author:** McDaniel

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2349

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) McDaniel, Jackson (11th)

To: County Affairs; Highways  
and Transportation

### SENATE BILL NO. 2349

AN ACT TO AMEND SECTION 65-7-91, MISSISSIPPI CODE OF 1972, TO INCREASE THE ACRES OF LAND THAT BOARDS OF SUPERVISORS MAY PURCHASE OR LEASE TO ESTABLISH HIGHWAY WORKSTATIONS; TO LIMIT THE RIGHT OF EMINENT DOMAIN TO NO MORE THAN TWO ACRES WHEN USED TO OBTAIN LAND FOR HIGHWAY WORKSTATIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 65-7-91, Mississippi Code of 1972, is amended as follows:

**[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]**

65-7-91. The board of supervisors may purchase or lease land upon which to establish stations for the working of the public roads, and may erect on the land barns, sheds, and other necessary buildings for the working of the public roads; but the board shall not purchase over ten (10) acres of land for any one (1) station. If the \* \* \* board is unable to purchase or lease, upon terms satisfactory to it, a site selected by it for a station, or in case it is unable to agree with any landowner as to the amount of compensation he \* \* \* shall receive for any land so selected, then the board may proceed to obtain not more than two (2) acres of said site by eminent domain, and the right of eminent domain for no more than two (2) acres is hereby conferred upon the boards of supervisors for said purposes.

**[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]**

65-7-91. (1) The board of supervisors may, for the benefit of the county, purchase or lease real property upon which to

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2349

establish facilities for the working of the public roads, and may erect on the real property barns, sheds, and other necessary buildings \* \* \* for the working of the public roads. However, only real property belonging to or under the control of the state or some other governmental entity may be leased at no more than fair market value by the county for such purposes and any such lease shall be for a term of not less than twenty-five (25) years.

(2) On or before October 1, 1990, the board shall establish and maintain one (1) central road repair and maintenance facility for the county or may designate an existing facility as the central road repair and maintenance facility for the county. Additional road repair and maintenance facilities may be established if the board \* \* \*, by resolution duly adopted and entered on its minutes, determines the establishment of these facilities is essential for the effective and efficient management of the county road and bridge programs.

(3) From and after October 1, 1990, no road repair and maintenance facilities shall be located on any land not owned by the county or leased by the county in accordance with this section unless these facilities are located on sixteenth section school lands or lands granted in lieu thereof.

(4) If the board is not able to purchase, upon terms satisfactory to it, a site selected by it for a facility, or in case the board is unable to agree with any landowner as to the amount of compensation he is to receive for any real property so selected, then the board may proceed to obtain not more than two (2) acres of the property by eminent domain, and the right of eminent domain for no more than two (2) acres is hereby conferred upon the boards of supervisors for such purposes.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2355

**Description:** Advertisements; counties and cities may not advertise in publications sponsored by political parties, political committees etc.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/13 (S) Referred To Accountability, Efficiency, Transparency
- 2 03/05 (S) Title Suff Do Pass
- 3 03/14 (S) Passed *(Vote)*
- 4 03/15 (S) Transmitted To House
- 5 03/19 (H) Referred To Municipalities;County Affairs
- 6 03/27 (H) DR - TSDP: MU To CA
- 7 03/28 (H) DR - TSDP: CA To MU
- 8 03/28 (H) Title Suff Do Pass
- 9 04/04 (H) Passed *(Vote)*
- 10 04/05 (H) Motion to Reconsider Entered (Scott, Blackmon, Myers)
- 11 04/13 (H) Motion to Reconsider Tabled
- 12 04/13 (H) Transmitted To Senate
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/17 (H) Enrolled Bill Signed
- 15 04/23 Approved by Governor

**Code Section:** A 017-0003-0003

**----- Additional Information -----**

**Senate Committee:** Accountability, Efficiency, Transparency

**House Committee:** Municipalities, County Affairs

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2355

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) McDaniel, Jackson (11th)

To: Accountability,  
Efficiency, Transparency

### SENATE BILL NO. 2355

AN ACT TO AMEND SECTION 17-3-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT COUNTIES AND MUNICIPALITIES ARE NOT AUTHORIZED TO ADVERTISE IN PUBLICATIONS SPONSORED BY POLITICAL PARTIES, POLITICAL COMMITTEES OR AFFILIATED ORGANIZATIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 17-3-3, Mississippi Code of 1972, is amended as follows:

17-3-3. Advertising pursuant to Section 17-3-1 shall include newspaper and magazine advertising and literature, publicity, expositions, public entertainment or other form of advertising or publicity, which in the judgment of such board or boards will be helpful toward advancing the moral, financial and other interests of such municipality or county; however, such advertising shall not include advertisements in publications sponsored by political parties, political committees or affiliated organizations, as such terms are defined in Section 23-15-801.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2363

**Description:** Voluntary acknowledgement of paternity; clarify one-year rescission period.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/13 (S) Referred To Public Health and Welfare;Judiciary, Division A
- 2 02/29 (S) DR - TSDP: PH To JA
- 3 03/02 (S) Title Suff Do Pass
- 4 03/08 (S) Passed *{Vote}*
- 5 03/08 (S) Immediate Release
- 6 03/08 (S) Transmitted To House
- 7 03/14 (H) Referred To Judiciary A
- 8 03/28 (H) Title Suff Do Pass
- 9 04/04 (H) Passed *{Vote}*
- 10 04/05 (H) Transmitted To Senate
- 11 04/11 (S) Enrolled Bill Signed
- 12 04/11 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 041-0057-0023

----- Additional Information -----

**Senate Committee:** Public Health and Welfare, Judiciary, Division A

**House Committee:** Judiciary A

**Principal Author:** Burton

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2363

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Burton, Jackson (11th)

To: Public Health and  
Welfare; Judiciary, Division  
A

### SENATE BILL NO. 2363

AN ACT TO AMEND SECTION 41-57-23, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ONE-YEAR RESCISSION PERIOD FOR THE VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 41-57-23, Mississippi Code of 1972, is amended as follows:

41-57-23. (1) Any petition, bill of complaint or other proceeding filed in the chancery court to: (a) change the date of birth by two (2) or more days, (b) change the surname of a child, (c) change the surname of either or both parents, (d) change the birthplace of the child because of an error or omission of such information as originally recorded or (e) make any changes or additions to a birth certificate resulting from a legitimation, filiation or any changes not specifically authorized elsewhere by statute, shall be filed in the county of residence of the petitioner or filed in any chancery court district of the state if the petitioner be a nonresident petitioner. In all such proceedings, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health. Process may be served upon the State Registrar of Vital Records. The State Board of Health shall file an answer to all such proceedings within the time as provided by general law. The provisions of this section shall not apply to adoption proceedings. Upon receipt of a certified copy of a decree, which authorizes and directs the State Board of Health to alter the

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2363

certificate, it shall comply with all of the provisions of such decree.

(2) If a child is born to a mother who was not married at the time of conception or birth, or at any time between conception and birth, and the natural father acknowledges paternity, the name of the father shall be added to the birth certificate if a notarized affidavit by both parents acknowledging paternity is received on the form prescribed or as provided in Section 93-9-9. The surname of the child shall be that of the father except that an affidavit filed at birth by both listed mother and father may alter this rule. In the event the mother was married at the time of conception or birth, or at any time between conception and birth, or if a father is already listed on the birth certificate, action must be taken under Section 41-57-23(1) to add or change the name of the father.

(3) (a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in subsection (3)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

**SECTION 2.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2367

**Description:** Vulnerable person act; clarify abuse and neglect under.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (S) Referred To Public Health and Welfare;Judiciary, Division B
- 2 02/29 (S) DR - TSDP: PH To JB
- 3 03/06 (S) Title Suff Do Pass
- 4 03/08 (S) Passed {Vote}
- 5 03/08 (S) Immediate Release
- 6 03/08 (S) Transmitted To House
- 7 03/13 (H) Referred To Public Health and Human Services;Judiciary B
- 8 03/22 (H) DR - TSDP: PH To JB
- 9 03/29 (H) DR - TSDP: JB To PH
- 10 03/29 (H) Title Suff Do Pass
- 11 04/05 (H) Passed {Vote}
- 12 04/09 (H) Transmitted To Senate
- 13 04/13 (S) Enrolled Bill Signed
- 14 04/13 (H) Enrolled Bill Signed
- 15 04/19 Approved by Governor

**Code Section:** A 043-0047-0005, A 043-0047-0019, A 099-0001-0005

----- **Additional Information** -----

**Senate Committee:** Public Health and Welfare, Judiciary, Division B

**House Committee:** Public Health and Human Services, Judiciary B

**Principal Author:** Tindell

**Additional Authors:** Hill, McDaniel, Burton, Wiggins, Watson, Blount, Longwitz, Jackson (11th)

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MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tindell, Hill, McDaniel,  
Burton, Wiggins, Watson, Blount, Longwitz,  
Jackson (11th)

To: Public Health and  
Welfare; Judiciary, Division  
B

### SENATE BILL NO. 2367

AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS THAT APPLY TO THE VULNERABLE PERSON ACT AND TO CLARIFY THAT ABUSE OR NEGLECT OF A VULNERABLE PERSON APPLIES TO BOTH THE MENTAL AND PHYSICAL HEALTH OF THE VULNERABLE PERSON; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 99-1-5, MISSISSIPPI CODE OF 1972, TO REVISE THE STATUTE OF LIMITATION FOR THE PROSECUTION OF FELONIOUS ABUSE OF VULNERABLE PERSONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 43-47-5, Mississippi Code of 1972, is amended as follows:

43-47-5. For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Abuse" means the commission of a willful act, or the willful omission of the performance of a duty, which act or omission contributes, tends to contribute to, or results in the infliction of physical pain, injury or mental anguish on or to a vulnerable person, the unreasonable confinement of a vulnerable person, or the willful deprivation by a caretaker of services which are necessary to maintain the mental or physical health of a vulnerable person. "Abuse" includes the sexual abuse delineated in Section 43-47-18. "Abuse" does not mean conduct that is a part of the treatment and care of, and in furtherance of the health and safety of, a patient or resident of a care facility, nor shall it mean a normal caregiving action or appropriate display of affection. "Abuse" includes, but is not limited to, a single incident.

(b) "Care facility" means:

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(i) Any institution or place for the aged or infirm as defined in, and required to be licensed under, the provisions of Section 43-11-1 et seq.;

(ii) Any long-term care facility as defined in Section 43-7-55;

(iii) Any hospital as defined in, and required to be licensed under, the provisions of Section 41-9-1 et seq.;

(iv) Any home health agency as defined in, and required to be licensed under, the provisions of Section 41-71-1 et seq.;

(v) Any hospice as defined in, and required to be licensed under, the provisions of Chapter 85 of Title 41; and

(vi) Any adult day services facility, which means a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or fewer individuals by a licensed institution for the aged or infirm.

(c) "Caretaker" means an individual, corporation, partnership or other organization which has assumed the responsibility for the care of a vulnerable person, but shall not include the Division of Medicaid, a licensed hospital, or a licensed nursing home within the state.

(d) "Court" means the chancery court of the county in which the vulnerable person resides or is located.

(e) "Department" means the Department of Human Services.

(f) "Emergency" means a situation in which:

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(i) A vulnerable person is in substantial danger of serious harm, death or irreparable harm if protective services are not provided immediately;

(ii) The vulnerable person is unable to consent to services;

(iii) No responsible, able or willing caretaker, if any, is available to consent to emergency services; and

(iv) There is insufficient time to utilize the procedure provided in Section 43-47-13.

(g) "Emergency services" means those services necessary to maintain a vulnerable person's vital functions and without which there is reasonable belief that the vulnerable person would suffer irreparable harm or death, and may include taking physical custody of the person.

(h) "Essential services" means those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable person's rights and resources and to maintain the physical or mental well-being of the person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words "essential services" shall not include taking a vulnerable person into physical custody without his consent, except as provided for in Section 43-47-15 and as otherwise provided by the general laws of the state.

(i) "Exploitation" means the illegal or improper use of a vulnerable person or his resources for another's profit, advantage or unjust enrichment, with or without the consent of the vulnerable person, and may include actions taken pursuant to a power of attorney. "Exploitation" includes, but is not limited to, a single incident.

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(j) "Illegal use" means any action defined under Mississippi law as a criminal act.

(k) "Improper use" means any use without the consent of the vulnerable person, any use with the consent of the vulnerable person if the consent is obtained by undue means, or any use that deprives the vulnerable person of his ability to obtain essential services or a lifestyle to which the vulnerable person has become accustomed and could have otherwise afforded.

(l) "Lacks the capacity to consent" means that a vulnerable person, because of physical or mental incapacity, lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including, but not limited to, provisions for health care, food, clothing or shelter. This may be reasonably determined by the department in emergency situations; in all other instances, the court shall make the determination following the procedures in Sections 43-47-13 and 43-47-15 or as otherwise provided by the general laws of the state.

(m) "Neglect" means either the inability of a vulnerable person who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental or physical health, or failure of a caretaker to supply the vulnerable person with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable person's mental and physical health. "Neglect" includes, but is not limited to, a single incident.

(n) "Protective services" means services provided by the state or other government or private organizations, agencies or individuals which are necessary to protect a vulnerable person from abuse, neglect or exploitation. They shall include, but not be limited to, investigation, evaluation of the need for services



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and provision of essential services on behalf of a vulnerable person.

(o) "Sexual penetration" shall have the meaning ascribed in Section 97-3-97.

(p) "Undue means" means the use of deceit, power, or persuasion over a vulnerable person resulting in the vulnerable person being influenced to act otherwise than by his own free will or without adequate attention to the consequences.

(q) "Vulnerable person" means a person, whether a minor or adult, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection from abuse, neglect, exploitation or improper sexual contact is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable person" also includes all residents or patients, regardless of age, in a care facility \* \* \*. The department shall not be prohibited from investigating, and shall have the authority and responsibility to fully investigate, in accordance with the provisions of this chapter, any allegation of abuse, neglect or exploitation regarding a patient in a care facility, if the alleged abuse, neglect or exploitation occurred at a private residence.

**SECTION 2.** Section 43-47-19, Mississippi Code of 1972, is amended as follows:

43-47-19. (1) It shall be unlawful for any person to abuse, neglect or exploit any vulnerable person.

(2) (a) Any person who willfully commits an act or willfully omits the performance of any duty, which act or omission contributes to, tends to contribute to, or results in neglect, physical pain, injury, mental anguish, unreasonable confinement or deprivation of services which are necessary to maintain the mental or physical health of a vulnerable person, \* \* \* shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2367

by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment. Any accepted medical procedure performed in the usual scope of practice shall not be a violation of this subsection.

(b) Any person who willfully exploits a vulnerable person, where the value of the exploitation is less than Two Hundred Fifty Dollars (\$250.00), shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment; where the value of the exploitation is Two Hundred Fifty Dollars (\$250.00) or more, the person who exploits a vulnerable person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

(3) Any person who willfully inflicts physical pain or injury upon a vulnerable person shall be guilty of felonious abuse or battery, or both, of a vulnerable person and, upon conviction thereof, may be punished by imprisonment in the State Penitentiary for not more than twenty (20) years.

(4) For any third or subsequent misdemeanor conviction of any person violating any part of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections and shall be fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00).

(5) Nothing contained in this section shall prevent proceedings against a person under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

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**SECTION 3.** Section 99-1-5, Mississippi Code of 1972, is amended as follows:

99-1-5. The passage of time shall never bar prosecution against any person for the offenses of murder, manslaughter, aggravated assault, kidnapping, arson, burglary, forgery, counterfeiting, robbery, larceny, rape, embezzlement, obtaining money or property under false pretenses or by fraud, felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, sexual battery of a child as described in Section 97-3-95(1)(c), (d) or (2), or exploitation of children as described in Section 97-5-33. A person shall not be prosecuted for conspiracy, as described in Section 97-1-1, \* \* \* for felonious assistance-program fraud, as described in Section 97-19-71, or for felonious abuse of vulnerable persons, as described in Sections 43-47-18 and 43-47-19, unless the prosecution for the offense is commenced within five (5) years next after the commission thereof. A person shall not be prosecuted for larceny of timber as described in Section 97-17-59, unless the prosecution for the offense is commenced within six (6) years next after the commission thereof. A person shall not be prosecuted for any other offense not listed in this section unless the prosecution for the offense is commenced within two (2) years next after the commission thereof. Nothing contained in this section shall bar any prosecution against any person who shall abscond or flee from justice, or shall absent himself from this state or out of the jurisdiction of the court, or so conduct himself that he cannot be found by the officers of the law, or that process cannot be served upon him.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2398

**Description:** Mississippi Small Business Regulatory Flexibility Act; create.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/13 (S) Referred To Finance
- 2 02/23 (S) Title Suff Do Pass Comm Sub
- 3 03/13 (S) Committee Substitute Adopted
- 4 03/13 (S) Passed (Vote)
- 5 03/15 (S) Transmitted To House
- 6 03/19 (H) Referred To Workforce Development;S.C.  
Accountblty/Efficiency/Transparency
- 7 03/29 (H) DR - TSDP: WD To AC
- 8 03/29 (H) DR - TSDP: AC To WD
- 9 03/29 (H) Title Suff Do Pass
- 10 04/10 (H) Set Aside-Pending Fiscal Note
- 11 04/11 (H) Tabled Subject To Call
- 12 04/11 (H) Passed (Vote)
- 13 04/12 (H) Transmitted To Senate
- 14 04/17 (S) Enrolled Bill Signed
- 15 04/17 (H) Enrolled Bill Signed
- 16 04/23 Approved by Governor

**Code Section:** A 025-0043-0003.105

----- Additional Information -----

**Senate Committee:** Finance

**House Committee:** Workforce Development, S.C. Accountblty/Efficiency/Transparency

**Principal Author:** McDaniel

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

*Additional Authors:* Gandy, Hill, Moran, Smith, Polk, Montgomery, Sojourner, Harkins, Hudson, Tindell, Watson, Wiggins, Collins, Longwitz, Doty, Fillingane, Flowers, Gollott, Chassaniol, Lee, Massey, Parks, Clarke, Ward, Burton, Brown



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) McDaniel, Gandy, Hill, Moran, Smith, Polk, Montgomery, Sojourner, Harkins, Hudson, Tindell, Watson, Wiggins, Collins, Longwitz, Doty, Fillingane, Flowers, Gollott, Chassaniol, Lee, Massey, Parks, Clarke, Ward, Burton, Brown To: Finance

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2398

AN ACT TO CREATE THE "MISSISSIPPI SMALL BUSINESS REGULATORY FLEXIBILITY ACT"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO ESTABLISH A SMALL BUSINESS REGULATORY REVIEW COMMITTEE; TO IMPROVE STATE RULEMAKING BY CREATING PROCEDURES TO ANALYZE THE ECONOMIC IMPACT ON AND AVAILABILITY OF MORE FLEXIBLE APPROACHES FOR SMALL BUSINESS; TO AMEND SECTION 25-43-3.105, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT EACH AGENCY PROPOSING ANY AMENDMENT TO A RULE UNDER THE ADMINISTRATIVE PROCEDURES LAW TO CONSIDER THE ECONOMIC IMPACT OF THE AMENDMENT; TO PROVIDE THAT THE REQUIRED WRITTEN REPORT PROVIDING AN ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE SHALL INCLUDE THE SPECIFIC LEGAL AUTHORITY FOR THE ADOPTION OF THE RULE AND A STATEMENT OF THE EFFECT THE PROPOSED ACTION WILL HAVE ON THE PUBLIC HEALTH, SAFETY AND WELFARE; TO PROVIDE THAT THE FULL TEXT OF THE ECONOMIC IMPACT STATEMENT MUST BE FILED WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE ADMINISTRATIVE BULLETIN AND TO REMOVE CERTAIN EXEMPTIONS FROM THE REQUIREMENTS OF THIS SECTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 25-43-4.101, Mississippi Code of 1972:

25-43-4.101. This act may be cited as the "Mississippi Small Business Regulatory Flexibility Act."

**SECTION 2.** The following shall be codified as Section 25-43-4.102, Mississippi Code of 1972:

25-43-4.102. As used in this act:

- (a) "Agency" is defined in Section 25-43-1.102.
- (b) "Department" means the Mississippi Development Authority.
- (c) "Committee" means the Small Business Regulatory Review Committee.
- (d) "Rule" is defined in Section 25-43-1.102, except that the term "rule" shall not include emergency or preemptive rules.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

(e) "Small business" means a for-profit business entity employing fewer than one hundred (100) full-time employees or having gross annual sales or revenues of less than Ten Million Dollars (\$10,000,000.00).

**SECTION 3.** The following shall be codified as Section 25-43-4.103, Mississippi Code of 1972:

25-43-4.103. (1) There is established a Small Business Regulatory Review Committee.

(2) The duties of the committee shall be to:

(a) Provide agencies with input regarding proposed permanent rules which may have an economic impact upon small business and for which a notice of intended action is published by the Secretary of State on or after July 1, 2012;

(b) Review any rule promulgated by a state agency for which notice has been given by the agency to the committee that the proposed rule has or may have an economic effect upon small business and make recommendations to the agency and or the Legislature regarding the need for a rule or legislation;

(c) Petition an agency to amend, revise, or revoke an existing regulation based on an economic impact on small business; and

(d) Advise and assist agencies in complying with the provisions of and perform any and all acts and duties set forth and authorized in the Mississippi Small Business Regulatory Flexibility Act.

(3) The committee is assigned to the Mississippi Development Authority for administrative purposes only. The department shall act as a coordinator for the committee, and shall not be required to provide legal counsel for the committee.

(4) The committee shall consist of twelve (12) members, appointed as follows:

(a) Four (4) members to be appointed by the Governor;

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(b) Four (4) members to be appointed by the Lieutenant Governor; and

(c) Four (4) members to be appointed by the Speaker of the House of Representatives.

(5) The appointing authorities shall appoint members of the committee from:

(a) Lists of nominees submitted by the following business organizations:

(i) National Federation of Independent Business;

(ii) Mississippi Manufacturers Association;

(iii) Mississippi Retail Association;

(iv) Mississippi Petroleum Marketers and

Convenience Stores Association;

(v) Mississippi Minority Contractors Association;

(vi) Mississippi Economic Council;

(vii) Mississippi Farm Bureau Federation; and

(viii) Any local chamber of commerce; and/or

(b) Small business owners or operators not affiliated with the business organizations listed in paragraph (a) of this subsection.

(6) Appointments to the committee shall be representative of a variety of small businesses in this state. All appointed members shall be either current or former owners or officers of a small business.

(7) The initial appointments to the committee shall be made within sixty (60) days from July 1, 2012. The Mississippi Development Authority shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Secretary of State.

(8) (a) Members initially appointed to the committee shall serve for terms ending December 31, 2014. Thereafter, appointed

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members shall serve two-year terms that expire on December 31 of the second year.

(b) The Governor shall appoint the initial chair of the committee from the appointed members for a term ending December 31, 2014. Subsequent chairs of the committee shall be elected by the committee from the appointed members for two-year terms that expire on December 31 of the second year.

(9) Members of the committee shall not receive any compensation.

(10) The committee shall meet as determined by the chair of the committee.

(11) A majority of the voting members of the committee shall constitute a quorum to do business. The concurrence of a majority of the members of the committee present and voting shall be necessary to make any action of the committee valid.

(12) No appointed committee member shall serve more than three (3) consecutive terms.

**SECTION 4.** The following shall be codified as Section 25-43-4.104, Mississippi Code of 1972:

25-43-4.104. (1) Prior to submitting proposed permanent rules for adoption, amendment, revision or revocation pursuant to the Mississippi Administrative Procedures Law, the agency shall comply with Section 25-43-3.105(2)(d) in order to determine whether the proposed rules affect small business by preparing an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the proposed regulation;

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) A statement of the probable effect on impacted small businesses;

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, including the following regulatory flexibility analysis:

(i) The establishment of less stringent compliance or reporting requirements for small businesses;

(ii) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(iii) The consolidation or simplification of compliance or reporting requirements for small businesses;

(iv) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(v) The exemption of some or all small businesses from all or any part of the requirements contained in the proposed regulations.

(2) If the economic impact statement reflects that a proposed rule may have an economic effect upon small business, the agency shall submit a copy of the proposed rules and the economic impact statement to the committee for its review and comment pursuant to the review and comment provisions of the Mississippi Administrative Procedures Law. During the committee review process, the director or the director's designee of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(3) Within the review and comment period, if the committee determines that the proposed rules may have an economic effect upon small business, the committee may submit to the agency its comments concerning the proposed regulation including its specific recommendations.



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

(4) A small business that is affected or aggrieved by final agency action to enforce a rule or regulation is entitled to review of agency compliance with the requirements of this act.

(5) To ensure that any final rule continues to minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes, each agency shall, during any periodic review required by this chapter, consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state and local governmental law or rules; and
- (e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

**SECTION 5.** The following shall be codified as Section 25-43-4.105, Mississippi Code of 1972:

25-43-4.105. (1) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has an impact on small business. In addition to distinctly setting forth how the regulation has had an impact on small business, the committee's petition shall address the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates or conflicts with other federal, state and local governmental laws or rules; and

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.

The petition may also renew any earlier comments made by the committee when the regulation was first promulgated, as provided by Section 25-43-4.104(3). Furthermore, the committee's petition shall make a specific recommendation concerning the regulation, including, but not limited to, whether the regulation should be amended, revised or revoked.

(2) The agency shall submit a written response of its determination to the committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Mississippi Administrative Procedures Law. If the agency determines that the petition is without merit, the committee may submit within thirty (30) days additional data in support of its petition.

**SECTION 6.** The following shall be codified as Section 25-43-4.106, Mississippi Code of 1972:

25-43-4.106. The committee shall make an annual report by January 15 of each year to the Governor, the Lieutenant Governor and the Speaker of the House of Representatives and provide detailed information on the committee's activities during the previous calendar year.

**SECTION 7.** The following shall be codified as Section 25-43-4.107, Mississippi Code of 1972:

25-43-4.107. (1) Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

(a) The small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation;

(b) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule; or

(c) The agency determines that the small business is making a good-faith effort to comply with the statute, ordinance or rule.

(2) Subsection (1) of this section shall not apply when:

(a) A small business fails to exercise good faith in complying with the statute, ordinance or rule;

(b) A violation involves criminal conduct;

(c) A violation results in serious health, safety or environmental impact; or

(d) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

**SECTION 8.** The following shall be codified as Section 25-43-4.108, Mississippi Code of 1972:

25-43-4.108. The Mississippi Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives.

**SECTION 9.** Sections 1 through 9 of this act shall be repealed from and after July 1, 2016.

**SECTION 10.** Section 25-43-3.105, Mississippi Code of 1972, is amended as follows:

[Through June 30, 2016, this section shall read as follows:]

25-43-3.105. (1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule

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or \* \* \* amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. \* \* \*

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or \* \* \* amendment to an existing rule imposing a duty, responsibility or requirement on any person \* \* \*. The economic impact statement shall include the following:

(a) The specific legal authority authorizing the promulgation of the rule.

(b) A description of:

(i) The need for the proposed action;

(ii) The benefits which will likely accrue as the result of the proposed action; and

(iii) The effect the proposed action will have on the public health, safety and welfare.

(c) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;

(d) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;

(e) An analysis of the impact of the proposed rule on small business;

(f) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;

(g) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2398

(h) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(i) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary and the full text of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate \* \* \* where, when and how persons may present their views on the proposed rule and demand an oral proceeding on the proposed rule if one is not already provided.

\* \* \*



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[From and after July 1, 2016, this section shall read as follows:]

25-43-3.105. (1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule or significant amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. For purposes of this section, a "significant amendment" means any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds One Hundred Thousand Dollars (\$100,000.00).

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or significant amendment to an existing rule imposing a duty, responsibility or requirement on any person, except as provided in subsection (7) of this section. The economic impact statement shall include the following:

- (a) A description of the need for and the benefits which will likely accrue as the result of the proposed action;
- (b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;
- (c) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;
- (d) An analysis of the impact of the proposed rule on small business;
- (e) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;
- (f) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the

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proposed rule where reasonable alternative methods exist which are not precluded by law;

(g) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(h) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate where persons may obtain copies of the full text of the economic impact statement and where, when and how persons may present their views on the proposed rule and

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demand an oral proceeding on the proposed rule if one is not already provided.

(6) If the agency has made a good-faith effort to comply with the requirements of subsections (1) and (2) of this section, the rule may not be invalidated on the ground that the contents of the economic impact statement are insufficient or inaccurate.

(7) This section does not apply to the adoption of:

(a) Any rule which is required by the federal government pursuant to a state/federal program delegation agreement or contract;

(b) Any rule which is expressly required by state law; and

(c) A temporary rule adopted pursuant to Section 25-43-3.108.

**SECTION 11.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session  
Senate Bill 2424

**Description:** Education Employment Procedures Law; clarify deadline for notification of nonreemployment.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/16 (S) Referred To Education
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed *{Vote}*
- 4 03/08 (S) Transmitted To House
- 5 03/21 (H) Referred To Education
- 6 03/29 (H) Title Suff Do Pass
- 7 04/10 (H) Passed *{Vote}*
- 8 04/11 (H) Transmitted To Senate
- 9 04/13 (S) Enrolled Bill Signed
- 10 04/13 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** A 037-0009-0105

— Additional Information —

*Senate Committee:* Education

*House Committee:* Education

*Principal Author:* Tollison

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2424

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison

To: Education

### SENATE BILL NO. 2424

AN ACT TO AMEND SECTION 37-9-105, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DEADLINE FOR NOTIFICATION OF NONREEMPLOYMENT OF TEACHERS AND ADMINISTRATORS UNDER THE EDUCATION EMPLOYMENT PROCEDURES LAW; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-9-105, Mississippi Code of 1972, is amended as follows:

37-9-105. If a recommendation is made by the school district not to offer an employee a renewal contract for a successive year, written notice of the proposed nonreemployment stating the reasons for the proposed nonreemployment shall be given no later than the following:

(a) If the employee is a principal, the superintendent, without further board action, shall give notice of nonreemployment on or before March 1; or

(b) If the employee is a teacher, administrator or other professional educator covered under Sections 37-9-101 through 37-9-113, the superintendent, without further board action, shall give notice of nonreemployment on or before April 15, or within ten (10) calendar days after the date that the Governor approves the appropriation bill(s) comprising the state's education budget for funding K-12, whichever date is later.

An interim conservator appointed pursuant to Section 37-17-6(14)(a) or a school board acting on the recommendation of a school district financial advisor appointed pursuant to Section 37-9-18 shall not be required to comply with the time limitations prescribed in this section for recommending the reemployment of



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principals, teachers, administrators or other professional educators.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2439

**Description:** Agritourism; provide limited liability for persons engaged in.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* Passage

**History of Actions:**

- 1 02/16 (S) Referred To Agriculture;Judiciary, Division A
- 2 02/29 (S) DR - TSDPCS: AG To JA
- 3 03/01 (S) Title Suff Do Pass Comm Sub
- 4 03/07 (S) Committee Substitute Adopted
- 5 03/07 (S) Passed {Vote}
- 6 03/08 (S) Transmitted To House
- 7 03/21 (H) Referred To Agriculture
- 8 03/27 (H) Title Suff Do Pass
- 9 04/04 (H) Passed {Vote}
- 10 04/05 (H) Transmitted To Senate
- 11 04/11 (S) Enrolled Bill Signed
- 12 04/11 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

----- Additional Information -----

**Senate Committee:** Agriculture, Judiciary, Division A

**House Committee:** Agriculture

**Principal Author:** Hudson

**Additional Authors:** Burton, Fillingane, Sojourner, Stone, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2439

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Hudson, Burton, Fillingane,  
Sojourner, Stone, Jackson (11th)

To: Agriculture; Judiciary,  
Division A

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2439

AN ACT TO PROVIDE LIMITED LIABILITY TO PERSONS ENGAGED IN AGRITOURISM ACTIVITIES; TO DEFINE CERTAIN TERMS; TO REQUIRE WARNING SIGNS AT AGRITOURISM FARMS; TO PROMOTE AGRITOURISM IN MISSISSIPPI; TO PROVIDE FOR THE REPEAL OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** As used in this act, the following terms shall have the meanings ascribed, unless the context requires otherwise:

(a) "Agritourism" means the travel or visit by the general public to, or the practice of inviting or allowing the general public to travel to or visit a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation for the purpose of enjoyment, education, or participation in the activities of the farm, ranch, or other agricultural, aquacultural, horticultural, or forestry operation.

(b) "Agritourism activity" means any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic or cultural or natural attractions.

(c) "Agritourism professional" means any person, partnership, corporation, or the employees or authorized agents, who offer or conduct one or more agritourism activities, whether or not for compensation.

(d) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity, including, but not limited to, certain

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2439

hazards involving surface and subsurface conditions, natural conditions of land, vegetation and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming, ranching, or other commercial agricultural, aquacultural, horticultural or forestry operation. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

(e) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

**SECTION 2.** (1) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities if the warning contained in Section 3 of this act is posted as required and, except as provided in subsection (2) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional may plead the provisions of this section as an affirmative defense.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(a) Commits or omits an act if the act or omission constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage or death to the participant.

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(b) Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage or death to the participant.

(c) Intentionally injures the participant.

(3) Nothing in subsection (1) of this section:

(a) Prevents or limits the liability of an agritourism professional under products liability laws.

(b) Shall be construed so as to negate that assumption of risk is an affirmative defense.

(4) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

**SECTION 3.** (1) Every agritourism professional must post and maintain signs that contain the warning notice specified in this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one (1) inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The signs and contracts must contain the following notice of warning:

### "WARNING

Under Mississippi law, there is no liability for an injury to or death of a participant in an agritourism



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activity conducted at this agritourism location if the injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section will prevent an agritourism professional from invoking the privileges of immunity provided by this act.

**SECTION 4.** (1) An agritourism professional must register with the Mississippi Department of Agriculture and Commerce on an annual basis. The registration shall contain information describing the agritourism activity that the agritourism professional conducts or intends to conduct and the location where the person conducts or intends to conduct such agritourism activity. Additionally, the agritourism professional must pay an annual fee in the amount of Fifty Dollars (\$50.00) to the Department at the time of registration. There is established in the State Treasury a special fund for the Mississippi Department of Agriculture and Commerce for the monies collected under this section. Unexpended monies remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.

(2) The Department shall maintain a list of all registered agritourism professionals, the registered agritourism activities conducted by each professional, and the registered agritourism location where the professional conducts such activities. Such list shall be made available to the public. The Department, in

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conjunction with other agritourism and rural economic efforts, shall promote and publicize registered agritourism professionals, activities and locations to advance agritourism in the state. The Department assumes no legal liability by registering agritourism professionals, but merely serves to promote agritourism in the state.

(3) The Department shall adopt guidelines to carry out the intent of this law.

**SECTION 5.** This act shall stand repealed on July 1, 2014.

**SECTION 6.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2450

**Description:** High school advanced placement courses; delete requirement for State Department of Education approval.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/16 (S) Referred To Education
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed *{Vote}*
- 4 03/08 (S) Transmitted To House
- 5 03/21 (H) Referred To Education
- 6 03/29 (H) Title Suff Do Pass
- 7 04/10 (H) Passed *{Vote}*
- 8 04/11 (H) Transmitted To Senate
- 9 04/13 (S) Enrolled Bill Signed
- 10 04/13 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** A 037-0015-0039

----- Additional Information -----

**Senate Committee:** Education

**House Committee:** Education

**Principal Author:** Tollison

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2450

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison

To: Education

### SENATE BILL NO. 2450

AN ACT TO AMEND SECTION 37-15-39, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT THE STATE DEPARTMENT OF EDUCATION MUST APPROVE ALL HIGH SCHOOL PRE-ADVANCED PLACEMENT COURSES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-15-39, Mississippi Code of 1972, is amended as follows:

37-15-39. (1) The purpose of this section is to ensure that each student has a sufficient education for success after high school and that all students have equal access to a substantive and rigorous curriculum that is designed to challenge their minds and enhance their knowledge skill.

(2) The following words and phrases have the meanings ascribed in this section unless the context clearly requires otherwise:

(a) "Advanced placement course" means any high school level preparatory course for a college advanced placement test that incorporates all topics specified by recognized advanced placement authorities on standards for a given subject area and is approved by recognized advanced placement authorities.

(b) "Pre-advanced placement course" means a middle, junior high or high school level course that specifically prepares students to enroll and participate in an advanced placement course.

(c) "Vertical team" means a group of educators from different grade levels in a given discipline working cooperatively to develop and implement a vertically aligned program aimed at helping students from diverse backgrounds acquire the academic

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skills necessary for success in the advanced placement program and other challenging course work.

(d) "High concentration of low-income students" means, when used with respect to a public school or school district, a public school or school district that serves a student population with fifty percent (50%) or more being low-income individuals ages five (5) through seventeen (17) years from a low-income family on the basis of: data on children eligible for the free or reduced price lunches under the National School Lunch Act; data on children in families receiving assistance under Part A of Title IV of the Social Security Act; data on children eligible to receive medical assistance under the Medicaid program under Title XIX of the Social Security Act; or an alternate method of identifying such children which combines or extrapolates that data.

(3) The State Board of Education shall establish clear, specific and challenging training guidelines that require teachers of advanced placement courses and teachers of pre-advanced placement courses to obtain a recognized advanced placement authority endorsed training. A teacher of an advanced placement or pre-advanced placement course, or both, must obtain the appropriate training.

(4) (a) In order to ensure that each student has a sufficient education for success after high school and that all students have equal access to a substantive and rigorous curriculum that is designed to challenge their minds and enhance their knowledge skill, school districts shall offer pre-advanced placement courses to prepare students for advanced placement course work.

(b) Subject to appropriation, funding shall be made available for the 2007-2008 school year so that all sophomores in Mississippi's public schools may take an examination that measures the students' ability to succeed in an advanced placement course.



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The State Department of Education shall seek federal funding through the Advanced Placement Incentive Grant Program and other available funding for this purpose. Funding efforts must be focused with an intent to carry out advanced placement and pre-advanced placement activities in school districts targeted as serving a high concentration of low-income students.

(c) \* \* \* The State Department of Education shall develop rules necessary for the implementation of advanced placement courses.

(5) Beginning with the 2007-2008 school year, all school districts must offer at least one (1) advanced placement course in each of the four (4) core areas of math, English, science and social studies, for a total offering of no less than four (4) advanced placement courses. The use of the state's online Advanced Placement Instructional Program is an appropriate alternative for the delivery of advanced placement courses.

Any public high school offering the International Baccalaureate Diploma Program is exempt from the requirements of this subsection. However, the school may participate in teacher training and program funding on the same basis as any high school offering advanced placement courses.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session  
**Senate Bill 2452**

**Description:** Employment of substitute teachers; clarify deduction of cost of substitutes from pay of absent licensee.

**Background Information:**

*Disposition:* Law  
*Deadline:* General Bill/Constitutional Amendment  
*Revenue:* No  
*Vote type required:* Majority  
*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/16 (S) Referred To Education
- 2 03/06 (S) Title Suff Do Pass Comm Sub
- 3 03/08 (S) Committee Substitute Adopted
- 4 03/08 (S) Passed {Vote}
- 5 03/08 (S) Immediate Release
- 6 03/09 (S) Transmitted To House
- 7 03/19 (H) Referred To Education
- 8 03/29 (H) Title Suff Do Pass
- 9 04/10 (H) Passed {Vote}
- 10 04/11 (H) Transmitted To Senate
- 11 04/17 (S) Enrolled Bill Signed
- 12 04/17 (H) Enrolled Bill Signed
- 13 04/23 Approved by Governor

**Code Section:** A 037-0007-0307

----- Additional Information -----

**Senate Committee:** Education

**House Committee:** Education

**Principal Author:** Tollison

**Additional Authors:** Hill, Jordan, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2452

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison, Hill, Jordan,  
Jackson (11th)

To: Education

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2452

AN ACT TO AMEND SECTION 37-7-307, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT LOCAL SCHOOL DISTRICTS MAY DEDUCT THE COST OF A SUBSTITUTE TEACHER FROM THE SALARY OF A LICENSED SCHOOL EMPLOYEE FOR THE FIRST 10 DAYS OF ABSENCE DUE TO SICK LEAVE IN EXCESS OF THE EMPLOYEE'S SICK LEAVE ALLOWANCE, AND SHALL WITHHOLD THE SALARY OF SUCH LICENSED EMPLOYEE FOR DAYS OF ABSENCE IN EXCESS OF SAID 10 DAYS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-7-307, Mississippi Code of 1972, is amended as follows:

37-7-307. (1) For purposes of this section, the term "licensed employee" means any employee of a public school district required to hold a valid license by the Commission on Teacher and Administrator Education, Certification and Licensure and Development.

(2) The school board of a school district shall establish by rules and regulations a policy of sick leave with pay for licensed employees and teacher assistants employed in the school district, and such policy shall include the following minimum provisions for sick and emergency leave with pay:

(a) Each licensed employee and teacher assistant, at the beginning of each school year, shall be credited with a minimum sick leave allowance, with pay, of seven (7) days for absences caused by illness or physical disability of the employee during that school year.

(b) Any unused portion of the total sick leave allowance shall be carried over to the next school year and credited to such licensed employee and teacher assistant if the licensed employee or teacher assistant remains employed in the

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same school district. In the event any public school licensed employee or teacher assistant transfers from one (1) public school district in Mississippi to another, any unused portion of the total sick leave allowance credited to such licensed employee or teacher assistant shall be credited to such licensed employee or teacher assistant in the computation of unused leave for retirement purposes under Section 25-11-109. Accumulation of sick leave allowed under this section shall be unlimited.

(c) No deduction from the pay of such licensed employee or teacher assistant may be made because of absence of such licensed employee or teacher assistant caused by illness or physical disability of the licensed employee or teacher assistant until after all sick leave allowance credited to such licensed employee or teacher assistant has been used.

(d) For the first ten (10) days of absence of a licensed employee because of illness or physical disability, in any school year, in excess of the sick leave allowance credited to such licensed employee, there shall be deducted from the pay of such licensed employee the established substitute amount of licensed employee compensation paid in that local school district, necessitated because of the absence of the licensed employee as a result of illness or physical disability. In lieu of deducting the established substitute amount from the pay of such licensed employee, the policy may allow the licensed employee to receive full pay for the first ten (10) days of absence because of illness or physical disability, in any school year, in excess of the sick leave allowance credited to such licensed employee. Thereafter, the regular pay of such absent licensed employee shall be suspended and withheld in its entirety for any period of absence because of illness or physical disability during that school year.

(3) Beginning with the school year 1983-1984, each licensed employee at the beginning of each school year shall be credited with a minimum personal leave allowance, with pay, of two (2) days

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for absences caused by personal reasons during that school year. Effective for the 2010-2011 and 2011-2012 school years, licensed employees shall be credited with an additional one-half (1/2) day of personal leave for every day the licensed employee is furloughed without pay as provided in Section 37-7-308. Such personal leave shall not be taken on the first day of the school term, the last day of the school term, on a day previous to a holiday or a day after a holiday, unless on such days an immediate family member of the employee is being deployed for military service. Personal leave may be used for professional purposes, including absences caused by attendance of such licensed employee at a seminar, class, training program, professional association or other functions designed for educators. No deduction from the pay of such licensed employee may be made because of absence of such licensed employee caused by personal reasons until after all personal leave allowance credited to such licensed employee has been used. However, the superintendent of a school district, in his discretion, may allow a licensed employee personal leave in addition to any minimum personal leave allowance, under the condition that there shall be deducted from the salary of such licensed employee the actual amount of any compensation paid to any person as a substitute, necessitated because of the absence of the licensed employee. Any unused portion of the total personal leave allowance up to five (5) days shall be carried over to the next school year and credited to such licensed employee if the licensed employee remains employed in the same school district. Any personal leave allowed for a furlough day shall not be carried over to the next school year.

(4) Beginning with the school year 1992-1993, each licensed employee shall be credited with a professional leave allowance, with pay, for each day of absence caused by reason of such employee's statutorily required membership and attendance at a regular or special meeting held within the State of Mississippi of



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the State Board of Education, the Commission on Teacher and Administrator Education, Certification and Licensure and Development, the Commission on School Accreditation, the Mississippi Authority for Educational Television, the meetings of the state textbook rating committees or other meetings authorized by local school board policy.

(5) Upon retirement from employment, each licensed and nonlicensed employee shall be paid for not more than thirty (30) days of unused accumulated leave earned while employed by the school district in which the employee is last employed. Such payment for licensed employees shall be made by the school district at a rate equal to the amount paid to substitute teachers and for nonlicensed employees, the payment shall be made by the school district at a rate equal to the federal minimum wage. The payment shall be treated in the same manner for retirement purposes as a lump-sum payment for personal leave as provided in Section 25-11-103(e). Any remaining lawfully credited unused leave, for which payment has not been made, shall be certified to the Public Employees' Retirement System in the same manner and subject to the same limitations as otherwise provided by law for unused leave. No payment for unused accumulated leave may be made to either a licensed or nonlicensed employee at termination or separation from service for any purpose other than for the purpose of retirement.

(6) The school board may adopt rules and regulations which will reasonably aid to implement the policy of sick and personal leave, including, but not limited to, rules and regulations having the following general effect:

(a) Requiring the absent employee to furnish the certificate of a physician or dentist or other medical practitioner as to the illness of the absent licensed employee, where the absence is for four (4) or more consecutive school days,

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or for two (2) consecutive school days immediately preceding or following a nonschool day;

(b) Providing penalties, by way of full deduction from salary, or entry on the work record of the employee, or other appropriate penalties, for any materially false statement by the employee as to the cause of absence;

(c) Forfeiture of accumulated or future sick leave, if the absence of the employee is caused by optional dental or medical treatment or surgery which could, without medical risk, have been provided, furnished or performed at a time when school was not in session;

(d) Enlarging, increasing or providing greater sick or personal leave allowances than the minimum standards established by this section in the discretion of the school board of each school district.

(7) School boards may include in their budgets provisions for the payment of substitute employees, necessitated because of the absence of regular licensed employees. All such substitute employees shall be paid wholly from district funds, except as otherwise provided for long-term substitute teachers in Section 37-19-20. Such school boards, in their discretion, also may pay, from district funds other than adequate education program funds, the whole or any part of the salaries of all employees granted leaves for the purpose of special studies or training.

(8) The school board may further adopt rules and regulations which will reasonably implement such leave policies for all other nonlicensed and hourly paid school employees as the board deems appropriate. Effective for the 2010-2011 and 2011-2012 school years, nonlicensed employees shall be credited with an additional one-half (1/2) day of personal leave for every day the nonlicensed employee is furloughed without pay as provided in Section 37-7-308.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2452

(9) Vacation leave granted to either licensed or nonlicensed employees shall be synonymous with personal leave. Unused vacation or personal leave accumulated by licensed employees in excess of the maximum five (5) days which may be carried over from one year to the next may be converted to sick leave. The annual conversion of unused vacation or personal leave to sick days for licensed or unlicensed employees shall not exceed the allowable number of personal leave days as provided in Section 25-3-93. The annual total number of converted unused vacation and/or personal days added to the annual unused sick days for any employee shall not exceed the combined allowable number of days per year provided in Sections 25-3-93 and 25-3-95. Local school board policies that provide for vacation, personal and sick leave for employees shall not exceed the provisions for leave as provided in Sections 25-3-93 and 25-3-95. Any personal or vacation leave previously converted to sick leave under a lawfully adopted policy before May 1, 2004, or such personal or vacation leave accumulated and available for use prior to May 1, 2004, under a lawfully adopted policy but converted to sick leave after May 1, 2004, shall be recognized as accrued leave by the local school district and available for use by the employee. The leave converted under a lawfully adopted policy prior to May 1, 2004, or such personal and vacation leave accumulated and available for use as of May 1, 2004, which was subsequently converted to sick leave may be certified to the Public Employees' Retirement System upon termination of employment and any such leave previously converted and certified to the Public Employees' Retirement System shall be recognized.

(10) (a) For the purposes of this subsection, the following words and phrases shall have the meaning ascribed in this paragraph unless the context requires otherwise:

(i) "Catastrophic injury or illness" means a life-threatening injury or illness of an employee or a member of

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2452

an employee's immediate family that totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the local school district for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries, are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, that result in intermittent absences from work and that are long-term in nature and require long recuperation periods may be considered catastrophic.

(ii) "Immediate family" means spouse, parent, stepparent, sibling, child or stepchild.

(b) Any school district employee may donate a portion of his or her unused accumulated personal leave or sick leave to another employee of the same or another school district who is suffering from a catastrophic injury or illness or who has a member of his or her immediate family suffering from a catastrophic injury or illness, in accordance with the following:

(i) The employee donating the leave (the "donor employee") shall designate the employee who is to receive the leave (the "recipient employee") and the amount of unused accumulated personal leave and sick leave that is to be donated, and shall notify the school district superintendent or his designee of his or her designation.

(ii) The maximum amount of unused accumulated personal leave that an employee may donate to any other employee may not exceed a number of days that would leave the donor employee with fewer than seven (7) days of personal leave remaining, and the maximum amount of unused accumulated sick leave that an employee may donate to any other employee may not exceed fifty percent (50%) of the unused accumulated sick leave of the donor employee.

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(iii) An employee must have exhausted all of his or her available leave before he or she will be eligible to receive any leave donated by another employee. Eligibility for donated leave shall be based upon review and approval by the donor employee's supervisor.

(iv) Before an employee may receive donated leave, he or she must provide the school district superintendent or his designee with a physician's statement that states the beginning date of the catastrophic injury or illness, a description of the injury or illness, and a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

(v) If the total amount of leave that is donated to any employee is not used by the recipient employee, the whole days of donated leave shall be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees.

(vi) Donated leave shall not be used in lieu of disability retirement.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2453

**Description:** Reading Sufficiency Program of Instruction; repeal components.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/16 (S) Referred To Education
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed *{Vote}*
- 4 03/08 (S) Transmitted To House
- 5 03/21 (H) Referred To Education
- 6 03/29 (H) Title Suff Do Pass
- 7 04/10 (H) Passed *{Vote}*
- 8 04/11 (H) Transmitted To Senate
- 9 04/17 (S) Enrolled Bill Signed
- 10 04/17 (H) Enrolled Bill Signed
- 11 04/23 Approved by Governor

**Code Section:** RP 037-0013-0010

---- Additional Information ----

**Senate Committee:** Education

**House Committee:** Education

**Principal Author:** Tollison

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2453

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison

To: Education

### SENATE BILL NO. 2453

AN ACT TO REPEAL SECTION 37-13-10, MISSISSIPPI CODE OF 1972, WHICH PROVIDES COMPONENTS OF A READING SUFFICIENCY PROGRAM OF INSTRUCTION TO BE IMPLEMENTED BY THE STATE BOARD OF EDUCATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-13-10, Mississippi Code of 1972, which provides components of a Reading Sufficiency Program of Instruction to be implemented by the State Board of Education, is hereby repealed.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2454

**Description:** Office of Dropout Prevention in the State Department of Education; clarify responsibility.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No



*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/16 (S) Referred To Education
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed {Vote}
- 4 03/08 (S) Motion to Reconsider Entered
- 5 03/16 (S) Reconsidered
- 6 03/16 (S) Amended
- 7 03/16 (S) Passed As Amended {Vote}
- 8 03/20 (S) Transmitted To House
- 9 03/21 (H) Referred To Education
- 10 03/29 (H) Title Suff Do Pass
- 11 04/10 (H) Passed {Vote}
- 12 04/11 (H) Transmitted To Senate
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/17 (H) Enrolled Bill Signed
- 15 04/23 Approved by Governor

**Amendments:**

  [S] Amendment No 1 *Adopted* Voice Vote

**Code Section:** A 037-0013-0080

----- Additional Information -----

*Senate Committee:* Education

*House Committee:* Education

*Principal Author:* Tollison

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2454

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison

To: Education

### SENATE BILL NO. 2454 (As Passed the Senate)

AN ACT TO AMEND SECTION 37-13-80, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT EACH SCHOOL DISTRICT IS RESPONSIBLE FOR STUDENT DROPOUT PREVENTION PROGRAMS AND THAT THE OFFICE OF DROPOUT PREVENTION IN THE STATE DEPARTMENT OF EDUCATION SHALL PROVIDE TECHNICAL ASSISTANCE TO THE LOCAL SCHOOL DISTRICTS UPON REQUEST; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 37-13-80, Mississippi Code of 1972, is amended as follows:

37-13-80. (1) There is created the Office of Dropout Prevention within the State Department of Education. The office shall be responsible for the administration of a statewide dropout prevention program \* \* \*.

(2) The State Superintendent of Public Education shall appoint a director for the Office of Dropout Prevention, who shall meet all qualifications established by the State Superintendent of Public Education and the State Personnel Board. The director shall be responsible for the proper administration of the Office of Dropout Prevention and any other regulations or policies that may be adopted by the State Board of Education.

(3) Each school district shall implement a dropout prevention program approved by the Office of Dropout Prevention of the State Department of Education by the 2012-2013, and annually thereafter, school year.

(4) \* \* \* Each local school district will be held responsible for reducing and/or eliminating dropouts in the district. The local school district will be responsible for the

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2454

implementation of dropout plans focusing on issues such as, but not limited to:

(a) Dropout Prevention initiatives that focus on the needs of individual local education agencies;

(b) Establishing policies and procedures that meet the needs of the districts;

(c) Focusing on the student-centered goals and objectives that are measureable;

(d) Strong emphasis on reducing the retention rates in grades kindergarten, first and second;

(e) Targeting subgroups that need additional assistance to meet graduation requirements; and

(f) Dropout recovery initiatives that focus on students age seventeen (17) through twenty-one (21), who dropped out of school.

(5) The Office of Dropout Prevention may provide technical assistance upon written request by the local school district. The Office of Dropout Prevention will collaborate with program offices within the Mississippi Department of Education to develop and implement policies and initiatives to reduce the state's dropout rate.

(6) Each school district's dropout prevention plan shall address how students will transition to the home school district from the juvenile detention centers.

(7) It is the intent of the Legislature that, through the statewide dropout prevention program and the dropout prevention programs implemented by each school district, the graduation rate for cohort classes will be increased to not less than eighty-five percent (85%) by the 2018-2019 school year. The Office of Dropout Prevention shall establish graduation rate benchmarks for each two-year period from the 2008-2009 school year through the 2018-2019 school year, which shall serve as guidelines for



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2454

increasing the graduation rate for cohort classes on a systematic basis to eighty-five percent (85%) by the 2018-2019 school year.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2474

**Description:** Engineers Licensing Law; shall not apply to activities conducted during the course of litigation.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/17 (S) Referred To Business and Financial Institutions
- 2 02/27 (S) Title Suff Do Pass
- 3 03/07 (S) Passed (Vote)
- 4 03/08 (S) Transmitted To House
- 5 03/21 (H) Referred To Judiciary A
- 6 03/28 (H) Title Suff Do Pass
- 7 04/04 (H) Passed (Vote)
- 8 04/04 (H) Motion to Reconsider Entered (Busby, Baker, Reynolds)
- 9 04/04 (H) Motion to Reconsider W/Drawn
- 10 04/05 (H) Transmitted To Senate
- 11 04/11 (S) Enrolled Bill Signed
- 12 04/11 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 073-0013-0041

---- Additional Information ----

**Senate Committee:** Business and Financial Institutions

**House Committee:** Judiciary A

**Principal Author:** Collins

**Additional Authors:** Browning

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2474

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Collins, Browning

To: Business and Financial  
Institutions

### SENATE BILL NO. 2474

AN ACT TO AMEND SECTION 73-13-41, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE ENGINEERS LICENSING LAW DOES NOT APPLY TO ACTIVITIES CONDUCTED DURING THE COURSE OF, OR IN ANTICIPATION OF, LITIGATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-13-41, Mississippi Code of 1972, is amended as follows:

73-13-41. (1) Sections 73-13-1 through 73-13-45 shall not be construed to prevent or to affect:

(a) The practice of any other legally recognized profession or trade, such as: (i) engineers employed by contractors to supervise work on which a licensed engineer is engaged; (ii) architects who are registered under the provisions of Chapter 1 of this title; and (iii) the practice of geology as regulated pursuant to Title 73, Chapter 63;

(b) The work of an employee or a subordinate of a person holding a certificate of licensure under Sections 73-13-1 through 73-13-45, provided such work does not include final designs or decisions and is done under the responsibility, checking and supervision of a person holding a certificate of licensure under Sections 73-13-1 through 73-13-45;

(c) The practice of officers and employees of the government of the United States while engaged within this state in the practice of engineering for said government;

(d) The performance of engineering services by any regular full-time employee of a manufacturing, research and development, railroad or other industrial corporation, provided:

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(i) Such services are rendered on or in connection with existing fixed works, equipment, systems, processes or facilities owned, operated, or leased by such corporation and/or its affiliates;

(ii) Such services are not rendered to third parties;

(iii) Such services do not consist of original plant design, original system design, or original process design, other than routine system extensions that do not compromise the integrity of the original design;

(iv) Such services comply with all requirements specified by the employee's company or corporation;

(v) All fixed works, equipment, systems, processes or facilities modified by such services undergo a safety review that confirms: 1. the construction and equipment is in accordance with design specifications; and 2. safety, operating, maintenance and emergency procedures are in place to safeguard life, health and property;

(vi) Such services are not required to be performed, approved or certified by a professional engineer pursuant to law or regulation, whether federal, state or local, other than Sections 73-13-1 through 73-13-45 hereof or any applicable rules or regulations promulgated by the Mississippi Board of Licensure for Professional Engineers and Surveyors;

It is further stated that this subsection (d) is intended to codify the policy and practices of the board on July 1, 1999, and that any ambiguities in this subsection should be construed in accordance with this intent;

(e) The performance of engineering services with respect to utility facilities by any public utility subject to regulation by the Mississippi Public Service Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Nuclear Regulatory Commission, including its

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parents, affiliates, subsidiaries; or by the officers and regular full-time employees of any such public utility, including its parents, affiliates or subsidiaries, provided that they are engaged solely and exclusively in performing service for such public utility and/or its parents, affiliates or subsidiaries, and as long as such services comply with all standard operating procedures and requirements specified by the employee's company or corporation. This exemption shall not extend to: (i) the practice of engineering performed by public utilities or their officers or employees when such services are rendered to nonaffiliated third parties in exchange for compensation other than that received from their employer, or the use of any name, title or words which tend to convey the impression that a nonregistrant is offering engineering services to the public; and (ii) services which are required to be performed, approved or certified by a professional engineer pursuant to law or regulation whether federal, state or local, other than Sections 73-13-1 through 73-13-45 hereof or any applicable rules or regulations promulgated by the Mississippi Board of Licensure for Professional Engineers and Surveyors;

It is further stated that this subsection (e) is intended to codify the policy and practices of the board on July 1, 1999, and that any ambiguities in this subsection should be construed in accordance with this intent; \* \* \*

(f) The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery, equipment, water plants, power generation, utility transmission, utility distribution facilities, sewage plants and solid waste disposal facilities; or

(g) Activities conducted during the course of, or in anticipation of, litigation including, but not exclusively: analyzing, evaluating, consulting, reconstructing, testing, responding to the opinions and testing conducted by others, and



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2474

offering expert testimony. However, this exemption shall not apply in legal proceedings where the subject matter of the litigation or claim is nonforensic engineering activity legally required to be performed under a Mississippi engineer's license.

(2) In addition to the exemptions provided in subsection (1), there is hereby granted and reserved to the board the authority to exempt from Sections 73-13-1 through 73-13-45 by regulation specific engineering tasks or functions performed by regular full-time employees of manufacturing, public utility, research and development, railroad or other industrial corporations rendered in the course and scope of their employment, on a case by case basis, if, in the opinion of the board, the public health and welfare is not endangered nor the engineering profession diminished.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2479

**Description:** Child drop-off with emergency medical services provider law; clarify parent anonymity under.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/17 (S) Referred To Public Health and Welfare
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed *{Vote}*
- 4 03/08 (S) Transmitted To House
- 5 03/21 (H) Referred To Public Health and Human Services
- 6 03/22 (H) Title Suff Do Pass
- 7 04/04 (H) Passed *{Vote}*
- 8 04/04 (H) Motion to Reconsider Entered (Myers, Mims, Barker)
- 9 04/05 (H) Motion to Reconsider Tabled
- 10 04/05 (H) Transmitted To Senate
- 11 04/11 (S) Enrolled Bill Signed
- 12 04/11 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 043-0015-0201

----- Additional Information -----

**Senate Committee:** Public Health and Welfare

**House Committee:** Public Health and Human Services

**Principal Author:** Burton

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2479

MISSISSIPPI LEGISLATURE

By: Senator(s) Burton

REGULAR SESSION 2012

To: Public Health and  
Welfare

### SENATE BILL NO. 2479

AN ACT TO AMEND SECTION 43-15-201, MISSISSIPPI CODE OF 1972, TO PROVIDE ANONYMITY TO PARENTS SEEKING RELIEF UNDER THE BABY DROP-OFF LAW AND TO CLARIFY THE WAIVER OF DUE PROCESS NOTIFICATION REGARDING TERMINATION OF PARENTAL RIGHTS OR ADOPTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 43-15-201, Mississippi Code of 1972, is amended as follows:

43-15-201. (1) An emergency medical services provider, without a court order, shall take possession of a child who is seventy-two (72) hours old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(2) The parent who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the emergency medical services provider inquire as to same. If the identity of the parent is known to the emergency medical services provider, the emergency medical services provider shall keep the identity confidential.

(3) A female presenting herself to a hospital through the emergency room or otherwise, who is subsequently admitted for purposes of labor and delivery, does not give up the legal protections or anonymity guaranteed under this section. If the mother clearly expresses a desire to voluntarily surrender custody of the newborn after birth, the emergency medical services provider can take possession of the child, without further action by the mother, as if the child had been presented to the emergency

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2479

medical services provider in the same manner outlined above in subsection (1) of this section.

(a) If the mother expresses a desire to remain anonymous, identifying information may be obtained for purposes of securing payment of labor and delivery costs only. If the birth mother is a minor, the hospital may use the identifying information to secure payment through Medicaid, but shall not notify the minor's parent or guardian without the minor's consent.

(b) The identity of the birth mother shall not be placed on the birth certificate or disclosed to the Department of Human Services.

(4) There is a presumption that by relinquishing a child in accordance with this section, the parent consents to the termination of his or her parental rights with respect to the child. As such, the parent waives the right to notification required by subsequent court proceedings.

(5) An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

**Mississippi Legislature  
2012 Regular Session  
Senate Bill 2497**

**Description:** Local option law; allow any city of 5,000 or more in certain counties to vote on whether to come out from under the dry law.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No









*Vote type required:* Majority

*Effective date:* VRA

**History of Actions:**

- 1 02/20 (S) Referred To Finance
- 2 - 03/01 (S) Title Suff Do Pass Comm Sub
- 3 03/13 (S) Committee Substitute Adopted
- 4 03/13 (S) Amended
- 5 03/13 (S) Passed As Amended /Vote/
- 6 03/15 (S) Transmitted To House
- 7 03/19 (H) Referred To Ways and Means
- 8 04/03 (H) Title Suff Do Pass As Amended
- 9 04/04 (H) Amended
- 10 04/04 (H) Passed As Amended /Vote/
- 11 04/09 (H) Returned For Concurrence
- 12 04/10 (S) Concurred in Amend From House /Vote/
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/17 (H) Enrolled Bill Signed
- 15 04/23 Approved by Governor

**Amendments:**

-   [S] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote
-   [S] Amendment No 2 (Cmte Sub) **Adopted** Voice Vote
-   [H] Committee Amendment No 1 **Tabled**
-   [H] Amendment No 2 **Adopted** Voice Vote

  Amendment Report for Senate Bill No. 2497



**2012 GENERAL LAWS OF MISSISSIPPI, SB 2497**

**Code Section:** A 067-0001-0014

**----- Additional Information -----**

***Senate Committee:*** Finance

***House Committee:*** Ways and Means

***Principal Author:*** Gollott

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2497

MISSISSIPPI LEGISLATURE

By: Senator(s) Gollott

REGULAR SESSION 2012

To: Finance

### SENATE BILL NO. 2497 (As Sent to Governor)

AN ACT TO AMEND SECTION 67-1-14, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY MUNICIPALITY HAVING A POPULATION OF NOT LESS THAN 5,000 ACCORDING TO THE LATEST FEDERAL CENSUS AND WHICH IS LOCATED IN A COUNTY WHICH HAS VOTED AGAINST COMING OUT FROM UNDER THE DRY LAW, OR ANY MUNICIPALITY THAT IS A COUNTY SEAT AND IS LOCATED IN A COUNTY WHICH HAS VOTED AGAINST COMING OUT FROM UNDER THE DRY LAW, MAY, AT AN ELECTION HELD FOR THAT PURPOSE, EITHER PROHIBIT OR PERMIT THE SALE, AND THE RECEIPT, STORAGE AND TRANSPORTATION FOR THE PURPOSE OF SALE, OF ALCOHOLIC BEVERAGES; TO AUTHORIZE MUNICIPALITIES THAT HAVE VOTED TO COME OUT FROM UNDER THE DRY LAWS AFTER THE EFFECTIVE DATE OF THIS ACT TO BY ORDINANCE PROVIDE THAT ALCOHOLIC BEVERAGES MAY BE SOLD IN SUCH MUNICIPALITY ONLY BY THE HOLDER OF AN ON-PREMISES RETAILER'S PERMIT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 67-1-14, Mississippi Code of 1972, is amended as follows:

67-1-14. (1) The legalizing provisions of this chapter may be effective, applicable and operative in any municipality located in a county which has voted against coming out from under the dry law if a local option election shall be called and held in such municipality in the manner and with the results hereinafter provided.

(2) (a) Any municipality in this state having a population of not less than five thousand (5,000) according to the latest federal census \* \* \* and which is located in a county which has voted against coming out from under the dry law, or any municipality that is a county seat and which is located in a county which has voted against coming out from under the dry law, may, at an election held for the purpose under the election laws applicable to such municipality, either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale, and the

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2497

receipt, storage and transportation for the purpose of sale, of alcoholic beverages. An election to determine whether such sale and possession shall be permitted in municipalities wherein its sale and possession is prohibited by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. In like manner, an election to determine whether such sale and possession shall be prohibited in municipalities wherein its sale is permitted by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. No election on either question shall be held by any one (1) municipality more often than once in two (2) years.

Thirty (30) days' notice shall be given to the qualified electors of such municipality, in the manner prescribed by law, upon the question of either permitting or prohibiting such sale and possession, such notice to contain a statement of the question to be voted on at the election. The ballots to be used in the election shall have the following words printed thereon: "For the legal sale of alcoholic liquors" and the words "Against the legal sale of alcoholic liquors" next below. In marking his ballot the voter shall make a cross (X) opposite the words of his choice.

If in the election a majority of the qualified electors voting in the election shall vote "for the legal sale of alcoholic liquors," then the municipal governing authorities shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality. If in the election a majority of the qualified electors voting in the election shall vote "against the legal sale of alcoholic liquors," then the municipal governing

authorities shall pass the necessary order prohibiting the sale of alcoholic beverages in such municipality.

(b) The provisions of this subsection shall also apply to any municipality having a population of not less than six thousand (6,000) according to the latest federal census, a portion of which is located in a county which has voted against coming out from under the dry law and a portion of which is located in a county which has voted in favor of coming out from under the dry law. For the purpose of determining whether or not such a municipality meets the threshold population of six thousand (6,000) which will qualify the municipality to hold an election under this subsection, the entire population of the municipality shall be considered; however, the petition to hold the election authorized in this subsection shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality who reside in that portion of the municipality located in a county which has voted against coming out from under the dry law and the election shall be held only in that portion of the municipality. In all other respects, the authority for the holding of elections and the manner in which such elections shall be conducted shall be as prescribed in paragraph (a) of this subsection; and, after proper certification of election results, the municipal governing authorities shall pass the appropriate order to permit or prohibit the legal sale of alcoholic beverages in that portion of the municipality located in a county which has voted against coming out from under the dry law.

(3) The governing authorities of a municipality that has voted to come out from under the dry laws after the effective date of this act may, by ordinance, provide that alcoholic beverages may be sold in the municipality only by the holder of an on-premises retailer's permit.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2497

**SECTION 2.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 3.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2501

**Description:** General Laws, legislative journals and MS cases reporters; Secretary of State may reduce number distributed free of cost.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Appropriations
- 2 03/01 (S) Title Suff Do Pass
- 3 03/08 (S) Passed {Vote}
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Appropriations
- 7 04/03 (H) Title Suff Do Pass
- 8 04/04 (H) Passed {Vote}
- 9 04/05 (H) Transmitted To Senate
- 10 04/11 (S) Enrolled Bill Signed
- 11 04/11 (H) Enrolled Bill Signed
- 12 04/18 Approved by Governor

**Code Section:** A 001-0005-0007, A 007-0003-0015, A 031-0001-0015

---- Additional Information ----

**Senate Committee:** Appropriations

**House Committee:** Appropriations

**Principal Author:** Blount

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2501

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Blount

To: Appropriations

### SENATE BILL NO. 2501

AN ACT TO AMEND SECTION 1-5-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SECRETARY OF STATE SHALL NOT PROVIDE FREE COPIES OF THE GENERAL LAWS AND JOURNALS OF THE LEGISLATIVE SESSIONS TO THE SHERIFFS UNLESS SPECIFICALLY REQUESTED IN WRITING; TO AMEND SECTION 7-3-15, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE SECRETARY OF STATE SHALL NOT PROVIDE FREE COPIES OF THE "SOUTHERN REPORTER-MISSISSIPPI CASES" TO THE SHERIFFS UNLESS SPECIFICALLY REQUESTED IN WRITING; TO AMEND SECTION 31-1-15, MISSISSIPPI CODE OF 1972, TO REDUCE THE NUMBER OF COPIES OF THE GENERAL LAWS AND JOURNALS OF THE LEGISLATIVE SESSIONS THAT THE SECRETARY OF STATE IS REQUIRED TO MAINTAIN FOR MORE THAN THREE YEARS AFTER THE PUBLICATION DATE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 1-5-7, Mississippi Code of 1972, is amended as follows:

1-5-7. The Office of the Secretary of State shall distribute and transmit, free of cost, the general laws and journals of each session of the Legislature, as follows: One (1) volume of each to the following: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, State Treasurer, Clerk of the Supreme Court, the Court of Appeals; Mississippi State University, Mississippi University for Women, Alcorn State University, University of Southern Mississippi, Delta State University, Jackson State University, Mississippi Valley State University, University of Mississippi and University of Mississippi School of Law; the sheriff of each county for the county law library; each member of the Legislature; the Secretary of the Senate; the Clerk of the House; each attorney employed in the Legislative Services Offices of the House of Representatives and the Senate; each legislative committee meeting room in the New Capitol; the Legislative Reference Bureau; the Legislative Budget Office; the

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2501

Department of Archives and History; and the Library of Congress at Washington, D.C. The copies to be provided each sheriff, member of the Legislature and each attorney employed in the Legislative Services Offices of the House and Senate shall not be provided unless specifically requested by such sheriff, legislator or attorney in writing. The Office of the Secretary of State shall provide, free of cost, one (1) volume of the local and private laws to each attorney employed in the Legislative Services Offices of the House of Representatives and the Senate; each legislative committee meeting room in the New Capitol; and the Legislative Reference Bureau; however, the copies to be provided each attorney employed in the Legislative Services Offices of the House and Senate shall not be provided unless specifically requested by such attorney in writing.

In addition to the volumes provided to the Legislative Services Offices' attorneys under this section, four (4) volumes of the general laws, three (3) volumes of the local and private laws and two (2) volumes of the journal of the particular house involved shall be provided free of cost to the Legislative Services Offices of the House of Representatives and the Senate. Receipt of any number of volumes that are to be provided to the Legislative Services Offices and their attorneys under this section may be waived in writing by the Director of the Legislative Services Office of either house.

**SECTION 2.** Section 7-3-15, Mississippi Code of 1972, is amended as follows:

7-3-15. The Secretary of State shall transmit, free of cost, one (1) copy of each volume of "Southern Reporter-Mississippi Cases" to the sheriff of each county of the state, for the county library, if the sheriff specifically requests copies of the volumes of "Southern Reporter-Mississippi Cases" in writing; one (1) copy of each volume thereof to each of the following educational institutions: Mississippi State University, Alcorn

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2501

State University, Mississippi University for Women, Mississippi College School of Law, Delta State University, Jackson State University, Mississippi Valley State University, and the University of Southern Mississippi; ten (10) copies of each volume thereof to the University of Mississippi; and one (1) copy of each volume to the Library of Congress at Washington, D.C.

The above provisions of this section are made in recognition of benefits received through receipt at depository libraries and elsewhere in the State of Mississippi of public documents of the United States under the provisions of federal and state laws.

**SECTION 3.** Section 31-1-15, Mississippi Code of 1972, is amended as follows:

31-1-15. The acts of the Legislature shall be printed in two (2) volumes, one (1) volume containing the public or general acts of the Legislature and the other volume the local and private acts of the Legislature, but for use of state departments the two (2) volumes can be combined. The number of general or public acts of the Legislature, of the local and private acts of the Legislature, of the journals of the Senate and the House of Representatives, of the Governor's message, and of the reports of officers, boards, and institutions to be printed, severally and respectively, shall be left within the discretion of the Secretary of State; and the Secretary of State may sell at a price, approximately the cost of publication, such copies of the laws and journals as may not be needed in the distribution, now or hereinafter required, and for the use of the Legislature and officers of the state.

The Secretary of State is authorized to dispose of all copies of the laws and journals after having kept same and failed to sell same as is provided by law at the expiration of a period of three (3) years from the date of publication. However, the Secretary of State shall keep a minimum of five (5) copies of each such publication on file in his office.

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**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2504

**Description:** Dog/hog fights; eliminate repeal of prohibition against.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Judiciary, Division B
- 2 03/06 (S) Title Suff Do Pass
- 3 03/08 (S) Passed {Vote}
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Judiciary B
- 7 03/29 (H) Title Suff Do Pass
- 8 04/05 (H) Passed {Vote}
- 9 04/09 (H) Transmitted To Senate
- 10 04/12 (S) Enrolled Bill Signed
- 11 04/12 (H) Enrolled Bill Signed
- 12 04/18 Approved by Governor

**Code Section:** A 097-0041-0018

---- Additional Information ----

**Senate Committee:** Judiciary, Division B

**House Committee:** Judiciary B

**Principal Author:** Hill

**Additional Authors:** Tindell, Collins, Gandy, Harkins, Doty, Smith, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2504

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Hill, Tindell, Collins,  
Gandy, Harkins, Doty, Smith, Jackson (11th)

To: Judiciary, Division B

### SENATE BILL NO. 2504

AN ACT TO AMEND SECTION 97-41-18, MISSISSIPPI CODE OF 1972, TO DELETE THE AUTOMATIC REPEAL ON THE LAW PROHIBITING THE STAGING OF CANINE-HOG FIGHTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 97-41-18, Mississippi Code of 1972, is amended as follows:

97-41-18. (1) For the purposes of this section, "hog" means a pig, swine or boar.

(2) It is unlawful for any person to organize or conduct any commercial event commonly referred to as a "catch" wherein there is a display of combat or fighting among one or more domestic or feral canines and feral or domestic hogs and in which it is intended or reasonably foreseeable that the canines or hogs would be injured, maimed, mutilated or killed.

(3) It is unlawful for any person to organize, conduct or financially or materially support any event prohibited by this section.

(4) The provisions of this section shall not apply to any competitive event in which canines trained for hunting or herding activities are released in an open or enclosed area to locate and corner hogs, commonly referred to as a "bay event," and in which competitive points are deducted if a hog is caught and held.

(5) The provisions of this section shall not apply to the lawful hunting of hogs with canines or the use of canines for the management, farming or herding of hogs which are livestock or the private training of canines for the purposes enumerated in this subsection provided that such training is conducted for the field

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2504

using accepted dog handling and training practices and is not in violation of the provisions of subsection (1) of this section.

(6) Any person convicted under the provisions of this section shall be fined not more than One Thousand Dollars (\$1,000.00), imprisoned for not more than six (6) months, or both.

★ ★ ★

**SECTION 2.** This act shall take effect and be in force from and after its passage.

**Mississippi Legislature  
2012 Regular Session  
Senate Bill 2526**

**Description:** Professional art therapists; update educational qualifications for licensure.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Public Health and Welfare
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed {Vote}
- 4 03/08 (S) Transmitted To House
- 5 03/21 (H) Referred To Public Health and Human Services
- 6 03/22 (H) Title Suff Do Pass
- 7 04/04 (H) Passed {Vote}
- 8 04/04 (H) Motion to Reconsider Entered (Myers, Mims, Barker)
- 9 04/05 (H) Motion to Reconsider Tabled
- 10 04/05 (H) Transmitted To Senate
- 11 04/11 (S) Enrolled Bill Signed
- 12 04/11 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 073-0065-0001, A 073-0065-0003, A 073-0065-0005, A 073-0065-0007

**----- Additional Information -----**

**Senate Committee:** Public Health and Welfare

**House Committee:** Public Health and Human Services

**Principal Author:** Bryan

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2526

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Bryan

To: Public Health and  
Welfare

### SENATE BILL NO. 2526

AN ACT TO AMEND SECTIONS 73-65-1, 73-65-3, 73-65-5 AND 73-65-7, MISSISSIPPI CODE OF 1972, TO CLARIFY STANDARDS ESTABLISHED BY THE NATIONAL ORGANIZATION THAT PROVIDES CREDENTIALING AND EDUCATIONAL REQUIREMENTS FOR LICENSED PROFESSIONAL ART THERAPISTS, TO DELETE CERTAIN STATUTORY EDUCATIONAL REQUIREMENTS FOR PROFESSIONAL ART THERAPISTS AND TO DELETE CERTAIN GRANDFATHER PROVISIONS NO LONGER APPLICABLE TO LICENSURE OF ART THERAPISTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-65-1, Mississippi Code of 1972, is amended as follows:

73-65-1. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Mississippi State Board of Health;

(b) "Licensed professional art therapist" means a person who has completed a master's or doctoral degree program in art therapy, or an equivalent course of study, from an accredited educational institution and who is licensed by the Mississippi State Board of Health, or who received registration from the American Art Therapy Association \* \* \* before 1980;

(c) "License holder" means a licensed professional art therapist licensed under the provisions of this chapter;

(d) "Accredited institution" means a university or college accredited by a nationally recognized accrediting agency of institutions of higher education, or an institution and clinical program approved by the American Art Therapy Association, Inc.



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2526

**SECTION 2.** Section 73-65-3, Mississippi Code of 1972, is amended as follows:

73-65-3. (1) There is created the Professional Art Therapists Advisory Council. The purpose of the council is to advise the Mississippi State Board of Health on matters relating to the administration and interpretation of the provisions of this chapter. The council shall consist of three (3) members who are professional art therapists licensed pursuant to Section 73-65-7 and who have engaged in art therapy practice for at least five (5) years, two (2) members shall be family members of consumers or consumers of art therapy services and one (1) physician or health professional member. All council members shall be citizens of the United States and residents of Mississippi. The initial council members who are not family members of consumers shall meet requirements for licensure and be licensed within one (1) year after July 1, 2000. Beginning July 1, 2000, each council member who is not a family member of a consumer shall be licensed as an art therapist before appointment and shall be actively engaged in the practicing or teaching of art therapy. Members of the council shall be appointed by the board for terms of four (4) years.

(2) Members of the council shall receive no compensation or per diem for their service on the council, but may receive reimbursement for travel expenses incurred in attending council meetings, as provided in Section 25-3-41.

(3) The council shall elect annually from its membership a chairman and any other officers as necessary to carry out its duties. The council shall meet at least two (2) times each year. Additional meetings may be called by the chairman, upon the written request of at least two (2) members of the council. Three (3) council members shall constitute a quorum of the council.

**SECTION 3.** Section 73-65-5, Mississippi Code of 1972, is amended as follows:

73-65-5. The board shall:

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(a) Promulgate regulations necessary to carry out the provisions of this chapter;

(b) Require that all applicants register for, take and pass the Art Therapy Credentials Board Examination as administered by the Art Therapy Credentials Board, Inc. \* \* \*;

(c) Establish the application deadline for and score required to pass the examination;

(d) Process applications and \* \* \* review the required examinations;

(e) Issue licenses to applicants who meet the requirements of Section 73-65-7 or 73-65-9;

(f) Deny, suspend or revoke a license to practice art therapy;

(g) Censure, reprimand, or place a license holder or applicant on probation for a period not to exceed one (1) year;

(h) Maintain a current register of license holders as a matter of public record;

(i) Establish criteria for continuing education;

(j) Establish procedures for receiving, investigating and resolving complaints against license holders;

(k) Approve the level of supervision and experience required for persons seeking licensure;

(l) Assess fees for the issuance and renewal of licenses to cover expenses of the board in administering this chapter;

(m) Implement an impaired professional art therapist treatment program; and

(n) Adopt a code of ethics as established by the Art Therapy Credentials Board, Inc.

**SECTION 4.** Section 73-65-7, Mississippi Code of 1972, is amended as follows:

73-65-7. (1) The board shall issue a license as a licensed professional art therapist to any person who files a completed

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2526

application, accompanied by the required fees, and who submits satisfactory evidence that the applicant is at least twenty-one (21) years of age, is a registered art therapist as defined by the Art Therapy Credentials Board, Inc., demonstrates professional competency by satisfactorily passing the required examination, \* \* \* and is a board certified art therapist as defined by the Art Therapy Credentials Board, Inc. \* \* \*

\* \* \*

(2) The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from nonaccredited institutions.

(3) If an applicant has met all of the requirements for licensure except satisfactorily passing the required examination, the applicant shall be scheduled to take the next examination following the approval of the examination.

\* \* \*

(4) The board may issue a license to an applicant without examination if the person possesses a valid regulatory document issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia, or any foreign nation that in the judgment of the board has requirements substantially equivalent to or exceeding the requirements in this section.

(5) The board may issue provisional licensure as a professional art therapist to any person who has completed the educational requirements established by the Art Therapy Credentials Board, Inc., and has met all requirements for licensure as a professional art therapist, except the experience and/or examination requirements, and is under the supervision of a supervisor acceptable to the board.

(6) The board may set criteria for continuing education and supervisory experience.

**2012 GENERAL LAWS OF MISSISSIPPI, SB 2526**

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2527

**Description:** Mississippi Respiratory Care Practice Act; make technical revisions to.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Public Health and Welfare
- 2 03/01 (S) Title Suff Do Pass Comm Sub
- 3 03/14 (S) Committee Substitute Adopted
- 4 03/14 (S) Passed {Vote}
- 5 03/15 (S) Transmitted To House
- 6 03/19 (H) Referred To Public Health and Human Services
- 7 03/22 (H) Title Suff Do Pass
- 8 04/04 (H) Passed {Vote}
- 9 04/04 (H) Motion to Reconsider Entered (Myers, Mims, Barker)
- 10 04/05 (H) Motion to Reconsider Tabled
- 11 04/05 (H) Transmitted To Senate
- 12 04/11 (S) Enrolled Bill Signed
- 13 04/11 (H) Enrolled Bill Signed
- 14 04/18 Approved by Governor

**Code Section:** R 073-0057-0001, R 073-0057-0003, A 073-0057-0005, A 073-0057-0007, R 073-0057-0009, A 073-0057-0011, R 073-0057-0013, R 073-0057-0015, A 073-0057-0017, A 073-0057-0021, A 073-0057-0025, A 073-0057-0027, R 073-0057-0029, R 073-0057-0031, A 073-0057-0035, R 073-0057-0037, R 073-0057-0039, A 073-0057-0033

----- Additional Information -----

**Senate Committee:** Public Health and Welfare

**House Committee:** Public Health and Human Services

**Principal Author:** Bryan



## 2012 GENERAL LAWS OF MISSISSIPPI, HB 2527

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Bryan

To: Public Health and  
Welfare

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2527

AN ACT TO REENACT AND AMEND SECTIONS 73-57-1, 73-57-3, 73-57-5, 73-57-7, 73-57-9, 73-57-11, 73-57-13, 73-57-15, 73-57-17, 73-57-21, 73-57-25, 73-57-27, 73-57-29, 73-57-31, 73-57-33, 73-57-35, 73-57-37 AND 73-57-39, MISSISSIPPI CODE OF 1972, WHICH IS THE MISSISSIPPI RESPIRATORY CARE PRACTICE ACT, TO REVISE DEFINITIONS, TO PROVIDE FOR APPOINTMENTS TO THE RESPIRATORY CARE ADVISORY COUNCIL, TO CLARIFY THE DUTIES OF THE STATE BOARD OF HEALTH, TO REFERENCE LICENSURE AND CREDENTIALING QUALIFICATIONS ESTABLISHED BY THE NATIONAL BOARD FOR RESPIRATORY CARE AND DELETE CERTAIN STATUTORY EDUCATIONAL QUALIFICATIONS AND CRITERIA FOR LICENSURE, TO PROVIDE FOR TEMPORARY PERMITS, TO CLARIFY PROFESSIONAL IDENTIFICATION, TO PROVIDE FOR LICENSE RENEWAL NOTICE, TO CLARIFY UNLICENSED PRACTICE; TO REPEAL SECTION 73-57-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDES STATUTORY REQUIREMENTS FOR EXAMINATIONS FOR LICENSURE IN RESPIRATORY CARE; TO REPEAL SECTION 73-57-23, MISSISSIPPI CODE OF 1972, WHICH PROVIDES A GRANDFATHER PROVISION FOR LICENSURE IN RESPIRATORY CARE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-57-1, Mississippi Code of 1972, is reenacted as follows:

73-57-1. This chapter shall be known and may be cited as the "Mississippi Respiratory Care Practice Act."

**SECTION 2.** Section 73-57-3, Mississippi Code of 1972, is reenacted as follows:

73-57-3. In order to safeguard the public health, safety and welfare; to insure the highest degree of professional conduct on the part of respiratory care practitioners; and to insure the availability of high quality respiratory care services, it is the purpose of this chapter to provide for the regulation of persons offering respiratory care services to the public.

**SECTION 3.** Section 73-57-5, Mississippi Code of 1972, is amended as follows:

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73-57-5. The following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Board" shall mean the Mississippi State Board of Health.

(b) "Council" shall mean the Respiratory Care Advisory Council.

(c) "License" shall mean the document of licensure issued by the board.

(d) "Respiratory care" shall mean the allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, pursuant to the orders of a physician licensed in the State of Mississippi.

(e) "Practice of respiratory care" shall include, but not be limited to: direct and indirect respiratory care services, including, but not limited to, the administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician; transcription and implementation of the written or verbal orders of a physician pertaining to the practice of respiratory care; observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; and implementation based on observed abnormalities, of appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of the State of Mississippi; or the initiation of emergency procedures under the regulations of the board or as otherwise permitted in this chapter. The practice of respiratory care may be performed in any clinic, hospital, skilled

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 2527

nursing facility, and private dwelling, or other place deemed appropriate or necessary by the board, in accordance with the prescription or verbal order of a physician \* \* \*.

(f) "Performance of respiratory care" means respiratory care in accordance with the prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following: administration of medical gases (except for the purpose of anesthesia), aerosols and humidification; environmental control mechanisms and hyperbaric therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airway; insertion and maintenance of artificial airways; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures, flows, collection of specimens of blood and blood gases, expired and inspired gas samples, respiratory secretions, and pulmonary function testing; and hemodynamic and other related physiologist measurements of the cardiopulmonary system.

(g) "Respiratory care practitioner" means:

(i) A person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care as defined in subsections (e) and (f) of this section;

(ii) A person who is capable of serving as a resource to the physician in relation to the technical aspects of respiratory care as to safe and effective methods for administering respiratory care modalities;

(iii) A person who is able to function in situations of unsupervised patient contact requiring great individual judgment; and

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(iv) A person capable of supervising, directing and teaching less skilled personnel in the provision of respiratory care services.

\* \* \*

(h) Respiratory care includes "inhalation therapy" and "respiratory therapy."

**SECTION 4.** Section 73-57-7, Mississippi Code of 1972, is amended as follows:

73-57-7. (1) There is established the Respiratory Care Advisory Council under the jurisdiction of the State Board of Health. The purpose of the council is to advise the State Board of Health on matters relative to the administration and interpretation of the provisions of this chapter. The council shall consist of nine (9) members, all citizens of the United States and residents of this state. There shall be one (1) public member, three (3) physician members consisting of a member of the American College of Chest Physicians, a member of the American Society of Anesthesiologists, and a member of the American Thoracic Society, and five (5) members \* \* \* engaged in the practice of respiratory care for a period of not less than five (5) years preceding their appointment to the council and who are members of the American Association for Respiratory Care and/or its state affiliate. At least one (1) member of the council who is engaged in the practice of respiratory care shall also be a licensed registered nurse.

(2) The State Board of Health shall appoint the members of the council for terms of four (4) years \* \* \*, with no member being appointed for more than three (3) consecutive terms and with the respiratory care practitioner members being licensed under the provisions of this chapter. Vacancies in the council shall be filled by appointment by the State Board of Health in like manner for the balance of the unexpired term and each member shall serve until his successor is appointed by the board in like manner for



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the balance of an unexpired term and each member shall serve until his successor is appointed and qualified.

(3) Upon expiration of the term of a physician member, the state societies of the American College of Chest Physicians, American Society of Anesthesiologists or American Thoracic Society may each, as appropriate, submit to the State Board of Health a list of \* \* \* persons qualified to serve on the council replacing the expired term of their respective member. Upon expiration of the term of any respiratory care practitioner member, the state society of the American Association for Respiratory Care may submit to the State Board of Health a list of \* \* \* qualified to serve for each position vacated. Appointments may be made from these lists by the board and additional lists may be provided by the respective organizations if requested by the board.

(4) The State Board of Health shall remove any member from the council for neglect of any duty required by law or for incompetency or unethical or dishonorable conduct.

**SECTION 5.** Section 73-57-9, Mississippi Code of 1972, is reenacted as follows:

73-57-9. (1) The council shall meet at least twice each year and shall elect annually during odd numbered years, a chairman from its physician members and from its respiratory care members a vice chairman. In even numbered years, it shall elect from its respiratory care members a chairman and from its physician members a vice chairman. The council may convene at the request of the chairman or as the board may determine for such other meetings as may be deemed necessary to transact its business.

(2) A majority (five (5)) of the members of the council, including the chairman or vice chairman, constitute a quorum at any meeting and a majority of the required quorum is sufficient for the council to take action by vote.



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**SECTION 6.** Section 73-57-11, Mississippi Code of 1972, is amended as follows:

73-57-11. The board, with the advice of the council, shall:

(a) Examine, license and renew the license of duly qualified applicants.

(b) Maintain an up-to-date list of every living person licensed to practice respiratory care under this chapter. The list shall show the licensee's last-known place of employment, last-known place of residence, and the date and number of his license/certificate.

\* \* \*

(c) Cause the prosecution of all persons violating this chapter and incur necessary expenses therefor.

(d) Keep a record of all proceedings of the board and such record shall be made available to the public for inspection during reasonable business hours.

(e) Conduct hearings upon charges for discipline of a licensee, or denial, revocation or suspension of a license.

(f) Maintain an up-to-date list of persons whose license has been suspended, revoked or denied. This list shall include the name(s), social security numbers, type and cause of sanction, date and penalty incurred, and the length of penalty. This list shall be available for public inspection during reasonable business hours. This list shall be supplied to similar boards in other states upon request.

**SECTION 7.** Section 73-57-13, Mississippi Code of 1972, is reenacted as follows:

73-57-13. The board, with the advice of the council, may:

(a) Adopt such rules and regulations not inconsistent with the law as may be necessary to carry into effect the provisions of this chapter. Rules and regulations shall be adopted in accordance with the Administrative Procedures Law of the State of Mississippi.

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 2527

(b) Employ such personnel as necessary to perform the functions of the board.

(c) Establish licensure requirements and procedures as deemed appropriate.

(d) Secure the services of resource consultants as deemed necessary by the board. Resource consultants shall receive travel and other necessary expenses, consistent with state laws and policies, incurred while engaged in consultative service to the board.

(e) Enter into agreements or contracts, consistent with state law, with outside organizations for the purpose of developing, administering, grading and/or reporting the results of licensing examinations. Such groups shall be capable of meeting the standards of the National Commission for Health Certifying Agencies, or its equivalent. The licensing examinations shall be validated and nationally recognized as testing respiratory care competencies.

**SECTION 8.** Section 73-57-15, Mississippi Code of 1972, is reenacted as follows:

73-57-15. (1) A member of the council shall receive compensation at the daily rate authorized by law for similar boards within this state plus actual and necessary travel and other expenses incurred while engaged in the discharge of official duties in accordance with the standard travel regulations of the State of Mississippi.

(2) Members of the council shall enjoy the same rights of protection from personal liability as those enjoyed by other employees of the state for actions taken while acting under the provisions of this chapter and in the course of their duties.

**SECTION 9.** Section 73-57-17, Mississippi Code of 1972, is amended as follows:

73-57-17. (1) An applicant for a license to practice respiratory care shall submit to the board written evidence,

## 2012 GENERAL LAWS OF MISSISSIPPI, HB 2527

verified by oath, that the applicant holds a credential, conferred by the National Board of Respiratory Care, as a Certified Respiratory Technician (CRT) and/or as a Registered Respiratory Therapist (RRT), or their successor credentials, providing such credential has not been suspended or revoked, or at the time of application has not lapsed.

\* \* \*

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

**SECTION 10.** Section 73-57-21, Mississippi Code of 1972, is amended as follows:

73-57-21. Upon payment of a fee, the board may issue a temporary permit to practice respiratory care for a period of six (6) months to an applicant for licensing \* \* \* who is a student in an \* \* \* approved respiratory care education program who expects to graduate within the next thirty (30) calendar days and who is eligible to sit for the CRT, RRT, or their successor examination. \* \* \*

**SECTION 11.** Section 73-57-25, Mississippi Code of 1972, is amended as follows:

73-57-25. \* \* \* A person holding a license to practice respiratory care in this state may use the title "licensed respiratory care practitioner" and the abbreviation "L.R.C.P.", "RCP" or "RCP-L".

\* \* \*

**SECTION 12.** Section 73-57-27, Mississippi Code of 1972, is amended as follows:

73-57-27. (1) A license shall be renewed biennially beginning with the first renewal term after the issuance of the license, except as herein provided. \* \* \* The board shall provide notice of renewal at least thirty (30) calendar days prior to expiration for renewal of license to every person to whom a

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license was issued or renewed during the preceding renewal period. The notice of renewal shall indicate the renewal process and required fees required to be completed before the date of expiration.

(2) Upon receipt of the notice of renewal and the fee, the board shall verify its contents and shall issue the licensee a license for the current renewal period, which shall be valid for the period stated thereon. The board, with the advice of the council, shall establish continuing education requirements for biennial renewal of the license, which shall include proof of completion of at least fifteen (15) clock hours approved by the board for continuing education credit.

(3) A licensee who allows his license to lapse by failing to renew it may be reinstated by the board upon payment of the renewal fee and reinstatement fee provided that such request for reinstatement is made within two (2) years of the end of the renewal period.

(4) A respiratory care practitioner who does not engage in the practice of respiratory care during the succeeding renewal period is not required to pay the renewal fee as long as he remains inactive. If he desires to resume the practice of respiratory care, he shall notify the board of his intent and shall satisfy the current requirements of the board in addition to remitting the renewal fee for the current renewal period and the reinstatement fee. \* \* \*

(5) The board is authorized to establish fees for replacement and duplicate licenses.

**SECTION 13.** Section 73-57-29, Mississippi Code of 1972, is reenacted as follows:

73-57-29. All fees established by the board under this chapter shall be set in such an amount as is necessary to reimburse the state for the cost of services rendered, not to exceed a biennial sum of Two Hundred Fifty Dollars (\$250.00) to be

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paid by any individual. Fees received by the board and monies collected under this chapter shall be deposited in the State Treasury to the credit of the Respiratory Care Fund. Expenses incurred in the performance of this chapter shall be paid in accordance with the accounting laws of the state.

**SECTION 14.** Section 73-57-31, Mississippi Code of 1972, is reenacted as follows:

73-57-31. (1) The board may revoke, suspend or refuse to renew any license or permit, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to practice respiratory care.

(b) Is unfit or incompetent by reason of negligence, habits or other causes of incompetency.

(c) Is habitually intemperate in the use of alcoholic beverages.

(d) Is addicted to, or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics.

(e) Is guilty of dishonest or unethical conduct.

(f) Has practiced respiratory care after his license or permit has expired or has been suspended.

(g) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued.

(h) Has violated or aided or abetted others in violation of any provision of this chapter.

(2) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license or permit of any licensee or permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or permit for being out of compliance with an order for support, and the



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procedure for the reissuance or reinstatement of a license or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 15.** Section 73-57-33, Mississippi Code of 1972, is amended as follows:

73-57-33. (1) Upon the filing of a written complaint with the board, charging a person with having committed any of the acts described in Section 73-57-31, the \* \* \* authorized employee of the board, shall make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing will be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen (15) calendar days prior thereto. The notice shall be by personal service or by certified or registered mail sent to the last-known address of the person.

(2) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or his counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(3) At the hearing the board shall administer oaths as may be necessary for the proper conduct of the hearing. The accused shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his or her behalf and to cross-examine witnesses. All hearings before the board shall be conducted by the board, which shall not be bound by strict rules

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of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. A final decision by the board shall include findings of fact and conclusions of law, separately stated, of which the accused shall receive a copy.

(4) If the board determined that probable cause and sufficient legal evidence exist to believe that an applicant does not possess the qualifications required by this chapter or that an accused has violated any of the provisions of Section 73-57-31 of this chapter, the board may refuse to issue a license to the applicant, or revoke, suspend or refuse to renew a license.

(5) The right to appeal from the action of the board in denying, revoking, suspending or refusing to renew any license issued by the board is hereby granted. Such appeal shall be to the circuit court of the county of the residence of the licensee on the record made, including a verbatim transcript of the testimony at the hearing. The appeal must be taken within thirty (30) days after notice of the action of the board in denying, revoking, suspending or refusing to renew the license. The appeal is perfected upon filing notice of the appeal, together with a bond in the sum of One Hundred Dollars (\$100.00), with two (2) sureties, conditioned that if the action of the board in denying, revoking, suspending or refusing to renew the license be affirmed by the circuit court, the licensee will pay the costs of the appeal and the action in the circuit court. Such bond shall be approved by the president of the board. Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the circuit court. Actions taken by the board in suspending a license or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license or permit suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified

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in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

**SECTION 16.** Section 73-57-35, Mississippi Code of 1972, is amended as follows:

73-57-35. (1) From and after July 1, 1992, no person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed under this chapter, except as otherwise provided by this chapter.

(2) This chapter does not prohibit:

(a) The practice of respiratory care which is an integral part of the program of study by students enrolled in a respiratory care education program recognized by the Joint Review Committee for Respiratory Therapy Education and the American Medical Association Council on Allied Health Education or their successors. Students enrolled in respiratory therapy education programs shall be identified as "student-RCP" and shall only provide respiratory care under direct clinical supervision.

(b) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner.

(c) Respiratory care services rendered in the course of an emergency.

(d) Persons in the military services or working in federal facilities shall be exempted from the provisions of this chapter when functioning in the course of their assigned duties.

(e) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training.

(3) Nothing in this chapter is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of the State of Mississippi.

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(4) An individual who, by passing an examination which includes content in one or more of the functions included in this chapter, shall not be prohibited from performing such procedures for which he was tested, so long as the testing body offering the examination is certified by the National Commission for Health Certifying Agencies or its equivalent, and so long as the individual is a licensed health care provider in the State of Mississippi.

(5) Practitioners regulated under this chapter shall be covered under the state's "Good Samaritan Act."

**SECTION 17.** Section 73-57-37, Mississippi Code of 1972, is reenacted as follows:

73-57-37. Nothing in this chapter shall be construed to permit the practice of medicine.

**SECTION 18.** Section 73-57-39, Mississippi Code of 1972, is reenacted as follows:

73-57-39. (1) It is a misdemeanor for any person to:

(a) Sell, fraudulently obtain or furnish any respiratory care permit, license, record, or aid or abet therein.

(b) Practice respiratory care under cover of any respiratory care diploma, permit, license or record illegally or fraudulently obtained or issued.

(c) Practice respiratory care unless duly licensed to do so under the provisions of this chapter.

(d) Impersonate in any manner or pretend to be a respiratory care practitioner or use the title "licensed respiratory care practitioner," the letters "L.R.C.P." or any other words, letters, signs, symbols or devices to indicate the person using them is a licensed respiratory care practitioner, unless duly authorized by license or permit to perform under the provisions of this chapter.

(e) Practice respiratory care during the time his license or permit is suspended, revoked or expired.

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(f) Fail to notify the board of the suspension, probation or revocation of any past or currently held licenses, required to practice respiratory care in this or any other jurisdiction.

(g) Make false representations or impersonate or act as a proxy for another person or allow or aid any person to impersonate him in connection with any examination or application for licensing or request to be examined or licensed.

(h) Otherwise violate any provisions of this chapter.

(2) Such misdemeanor shall, upon conviction, be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than six (6) months or by both fine and imprisonment for each offense.

**SECTION 19.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2532

**Description:** Memorial Highway; designate the U.S. Highway 82 bypass in Washington County, Mississippi, as the "Anse Dees Memorial Bypass."

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Highways and Transportation
- 2 03/06 (S) Title Suff Do Pass
- 3 03/08 (S) Passed (Vote)
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Transportation
- 7 03/28 (H) Title Suff Do Pass
- 8 04/04 (H) Passed (Vote)
- 9 04/05 (H) Transmitted To Senate
- 10 04/11 (S) Enrolled Bill Signed
- 11 04/11 (H) Enrolled Bill Signed
- 12 04/18 Approved by Governor

----- Additional Information -----

**Senate Committee:** Highways and Transportation

**House Committee:** Transportation

**Principal Author:** Clarke

**Additional Authors:** Kirby, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2532

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Clarke, Kirby, Jackson (11th)

To: Highways and  
Transportation

### SENATE BILL NO. 2532

AN ACT TO DESIGNATE THE U.S. HIGHWAY 82 BYPASS WITHIN WASHINGTON COUNTY, MISSISSIPPI, AS THE "ANSE DEES MEMORIAL BYPASS"; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) The U.S. Highway 82 bypass within Washington County, Mississippi, is designated and shall be known as the "Anse Dees Memorial Bypass."

(2) The Mississippi Department of Transportation shall erect and maintain appropriate signs along and approaching the bypass.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2533

**Description:** Residential Builders and Remodelers Act; revise license requirements and exemptions.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Housing;Business and Financial Institutions
- 2 02/29 (S) DR - TSDPCS: HO To BF
- 3 03/05 (S) DR - TSDPCS: BF To HO
- 4 03/06 (S) Title Suff Do Pass Comm Sub
- 5 03/08 (S) Committee Substitute Adopted
- 6 03/08 (S) Amended
- 7 03/08 (S) Passed As Amended *{Vote}*
- 8 03/08 (S) Immediate Release
- 9 03/12 (S) Transmitted To House
- 10 03/14 (H) Referred To Judiciary B
- 11 03/29 (H) Title Suff Do Pass
- 12 04/05 (H) Passed *{Vote}*
- 13 04/09 (H) Transmitted To Senate
- 14 04/12 (S) Enrolled Bill Signed
- 15 04/12 (H) Enrolled Bill Signed
- 16 04/18 Approved by Governor

**Amendments:**

  [S] Amendment No 1 (Cmte Sub) **Adopted** Voice Vote

  [S] Amendment No 2 (Cmte Sub) **Adopted** Voice Vote

**Code Section:** A 073-0059-0001, A 073-0059-0003, A 073-0059-0015

----- Additional Information -----

**Senate Committee:** Housing, Business and Financial Institutions

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*House Committee:* Judiciary B

*Principal Author:* Massey

*Additional Authors:* Wiggins, Longwitz, Harkins, Smith, Hill, Moran, Doty, Tindell, Flowers, Polk, Hale, Brown, Ward, Chassaniol, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2533

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Massey, Wiggins, Longwitz,  
Harkins, Smith, Hill, Moran, Doty, Tindell,  
Flowers, Polk, Hale, Brown, Ward, Chassaniol,  
Jackson (11th)

To: Housing; Business and  
Financial Institutions

SENATE BILL NO. 2533  
(As Passed the Senate)

AN ACT TO AMEND SECTION 73-59-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "ACTIVE LICENSEE" AND "INACTIVE LICENSEE" IN RELATION TO THE RESIDENTIAL BUILDERS AND REMODELERS ACT; TO AMEND SECTION 73-59-3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF CONTRACTORS TO REQUIRE LIABILITY INSURANCE BEFORE OBTAINING A LICENSE; TO AMEND SECTION 73-59-15, MISSISSIPPI CODE OF 1972, TO REVISE THE EXEMPTIONS FROM THE RESIDENTIAL BUILDERS AND REMODELERS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 73-59-1, Mississippi Code of 1972, is amended as follows:

73-59-1. For the purposes of this chapter, the following words shall have the meanings ascribed herein:

(a) "Board" means the State Board of Contractors created in Section 31-3-3, Mississippi Code of 1972.

(b) "Residential builder" means any corporation, partnership or individual who constructs a building or structure for sale for use by another as a residence or who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not more than three (3) floors in height, to be used by another as a residence, when the cost of the undertaking exceeds Fifty Thousand Dollars (\$50,000.00).

(c) "Remodeler" means any corporation, partnership or individual who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of improvements to an



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existing residence when the cost of the improvements exceeds Ten Thousand Dollars (\$10,000.00).

(d) "Residential construction" means any undertaking described in paragraph (b) of this section performed by a residential builder.

(e) "Residential improvement" means any undertaking described in paragraph (c) of this section performed by a remodeler.

(f) "Active licensee" means any builder or remodeler licensed under this chapter and engaged in building and remodeling.

(g) "Inactive licensee" means any builder or remodeler licensed under this chapter and not engaged in building or remodeling.

**SECTION 2.** Section 73-59-3, Mississippi Code of 1972, is amended as follows:

73-59-3. (1) Except as otherwise provided in Section 73-59-15 or Section 33-1-39, persons who perform or formerly performed residential construction or residential improvement shall be licensed by the board annually as an active licensee or inactive licensee, as appropriate, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the board:

(a) Proof of workers' compensation insurance, if applicable; however, workers' compensation insurance shall not be required for inactive licensees;

(b) A federal employment identification number or social security number.

(2) The board may \* \* \* require liability insurance to be licensed under this chapter \* \* \* and it shall be reflected on the certificate of licensure; however, liability insurance shall not be required for inactive licensees.

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(3) The board shall issue or renew a license to an active or inactive residential builder or remodeler upon payment to the board of the license fee. The initial license fee shall be Fifty Dollars (\$50.00). The license fee may thereafter be increased or decreased by the board and cannot exceed One Hundred Dollars (\$100.00); however, the receipts from fees collected by the board shall be no greater than the amount required to pay all costs and expenses incurred by the board in enforcing the provisions of this chapter. Twenty-five Dollars (\$25.00) of the fee required by this section which is assessed to residential builders licensed under the provisions of Section 73-59-1 et seq. shall be deposited to the Construction Education Fund created pursuant to Section 31-3-14 and shall be distributed to the Mississippi Housing Institute. The remaining fees collected under this chapter shall be deposited into the special fund in the State Treasury known as the "State Board of Contractors Fund" created pursuant to Section 31-3-17 and shall be used for the administration and enforcement of this chapter and as provided in Section 31-3-14. Amounts in such fund shall not lapse into the State General Fund at the end of a fiscal year. Interest accrued to such fund shall remain in the fund. All expenditures from the special fund shall be by requisition to the Department of Finance and Administration, signed by the executive secretary of the board and countersigned by the chairman or vice chairman of the board.

(4) Except as provided in Section 33-1-39, the license shall expire on the last day of the twelfth month following its issuance or renewal and shall become invalid unless renewed. The board may notify by mail or e-mail every licensee under this chapter of the date of the expiration of his license and the amount of the fee required for renewal of the license for one (1) year. To receive notification by e-mail, a licensee must notify the board of his desire to receive notification by e-mail and provide an e-mail address. Such notice may be mailed or e-mailed within thirty (30)

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days prior to the expiration date of the license. The failure on the part of any licensee to renew his license annually in such twelfth month shall not deprive such licensee of the right of renewal, provided that renewal is effected within one hundred twenty (120) days after the expiration date of the license by payment of the license fee plus a penalty of ten percent (10%) of the license fee. A new license required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the board, for a charge of not more than Twenty-five Dollars (\$25.00). An inactive licensee may become an active licensee upon application meeting all the requirements of this section.

(5) Any person who is not a resident of the State of Mississippi who desires to perform residential construction or residential improvement shall be licensed to perform such construction or improvement as provided by this chapter.

**SECTION 3.** Section 73-59-15, Mississippi Code of 1972, is amended as follows:

73-59-15. (1) This chapter shall not apply to:

(a) Agricultural buildings, buildings used for agricultural purposes, buildings constructed as a community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence, or who acts as his own general contractor in the performance of construction or improvement on his own residence, or who acts under the supervision of the owner-occupant who is the general contractor;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner-occupant with respect to residential construction or improvement, when the owner of such

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2533

construction or improvement is related to such person by consanguinity or direct affinity;

(d) The owners of property who supervise, superintend, oversee, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or maintenance of any building, railroad, excavation, project, development, improvement, plant facility or any other construction undertaking on such property for use by such owner and which will not be for sale, rent, public use or public assembly;

(e) Any employee of a licensed residential builder, provided that the employee is not building a residence for sale;

(f) Any contractor holding a valid license or certificate of responsibility for general construction from the board;

(g) Any nonresident contractor holding a valid license or certificate of responsibility for general construction;

(h) Any person who constructs two (2) single residences or less within a period of one (1) year in any county or municipality which does not require a building permit or any local certification for such construction, provided that the person is not building the residences for sale.

(2) A person specified in subsection (1)(b) or (c) shall not make more than two (2) applications for a permit to construct a single residence or shall not construct more than two (2) single residences within a period of one (1) year. There shall be a rebuttable presumption that such person intends to construct for the purpose of sale, lease, rent or any similar purpose if more than two (2) applications are made for a permit to construct a single residence or if more than two (2) single residences are constructed within a period of one (1) year.

(3) The provisions of this section shall not apply to builders and remodelers who are not domiciled in the State of

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2533

Mississippi. Builders and remodelers who are not domiciled in the State of Mississippi are not required to be licensed under the provisions of this chapter if the state in which they are domiciled requires licensing and the licensing state's requirements are at least the equivalent of those requirements provided in this chapter.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2535

**Description:** University of Southern MS; authorize Dept. of Finance & Administration to sell certain real property at the USM Campus.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Universities and Colleges;Public Property
- 2 03/01 (S) DR - TSDP: UC To PP
- 3 03/05 (S) Title Suff Do Pass
- 4 03/08 (S) Passed {Vote}
- 5 03/08 (S) Immediate Release
- 6 03/08 (S) Transmitted To House
- 7 03/13 (H) Referred To Universities and Colleges;Public Property
- 8 03/28 (H) DR - TSDP: UC To PP
- 9 04/03 (H) DR - TSDP: PP To UC
- 10 04/03 (H) Title Suff Do Pass
- 11 04/10 (H) Passed {Vote}
- 12 04/11 (H) Transmitted To Senate
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/17 (H) Enrolled Bill Signed
- 15 04/23 Approved by Governor

----- Additional Information -----

**Senate Committee:** Universities and Colleges, Public Property

**House Committee:** Universities and Colleges, Public Property

**Principal Author:** Polk

**Additional Authors:** Hill, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2535

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Polk, Hill, Jackson (11th)

To: Universities and  
Colleges; Public Property

### SENATE BILL NO. 2535

AN ACT TO AUTHORIZE THE DEPARTMENT OF FINANCE AND ADMINISTRATION, ACTING ON BEHALF OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, TO SELL AND CONVEY CERTAIN STATE-OWNED REAL PROPERTY UNDER THE POSSESSION AND CONTROL OF THE UNIVERSITY OF SOUTHERN MISSISSIPPI, LOCATED IN THE CITY OF HATTIESBURG, FORREST COUNTY, MISSISSIPPI; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) The Department of Finance and Administration, acting on behalf of the Board of Trustees of State Institutions of Higher Learning, is authorized to sell and convey certain state-owned real property under the possession and control of the University of Southern Mississippi, being in Block 27 of the City of Hattiesburg, Forrest County, Mississippi, and more particularly described as follows:

Lot 22, Lot 23, and Lot 24 and the East 1/2 of a vacated alley West of and adjacent to and parallel with the above said Lots, all in Block 27 of the Pine Crest Second Survey of and Addition to the City of Hattiesburg, Mississippi, according to the map or plat thereof on file in the office of the Chancery Clerk of Forrest County, Mississippi.

(2) The real property described in subsection (1) of this section shall not be sold for less than the current fair market value as determined by the averaging of at least two (2) appraisals by qualified appraisers, one (1) of whom shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

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(3) The State of Mississippi shall retain all mineral rights to the real property sold under this section.

(4) Proceeds from the sale of the real property described in subsection (1) of this section shall be deposited into a special fund in the State Treasury and shall be expended only for the benefit of the University of Southern Mississippi.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2539

**Description:** Statute of limitation; revise for prosecution of vulnerable person abuse.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Judiciary, Division B
- 2 03/06 (S) Title Suff Do Pass
- 3 03/08 (S) Passed *(Vote)*
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Judiciary B
- 7 04/03 (H) Title Suff Do Pass
- 8 04/10 (H) Passed *(Vote)*
- 9 04/11 (H) Transmitted To Senate
- 10 04/17 (S) Enrolled Bill Signed
- 11 04/17 (H) Enrolled Bill Signed
- 12 04/23 Approved by Governor

**Code Section:** A 099-0001-0005

----- Additional Information -----

**Senate Committee:** Judiciary, Division B

**House Committee:** Judiciary B

**Principal Author:** Hill

**Additional Authors:** Moran, Watson, Collins, Gandy, Sojourner, Massey, Doty, Smith, Harkins, Tindell, Jackson (15th), Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2539

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Hill, Moran, Watson, Collins, To: Judiciary, Division B  
Gandy, Sojourner, Massey, Doty, Smith,  
Harkins, Tindell, Jackson (15th), Jackson  
(11th)

### SENATE BILL NO. 2539

AN ACT TO BE KNOWN AS THE GENERAL BURKS LAW; TO AMEND SECTION 99-1-5, MISSISSIPPI CODE OF 1972, TO REVISE THE STATUTE OF LIMITATION FOR THE PROSECUTION OF FELONIOUS ABUSE OF VULNERABLE PERSONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 99-1-5, Mississippi Code of 1972, is amended as follows:

99-1-5. The passage of time shall never bar prosecution against any person for the offenses of murder, manslaughter, aggravated assault, kidnapping, arson, burglary, forgery, counterfeiting, robbery, larceny, rape, embezzlement, obtaining money or property under false pretenses or by fraud, felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, sexual battery of a child as described in Section 97-3-95(1)(c), (d) or (2), or exploitation of children as described in Section 97-5-33. A person shall not be prosecuted for conspiracy, as described in Section 97-1-1, \* \* \* for felonious assistance-program fraud, as described in Section 97-19-71, or for felonious abuse of vulnerable persons, as described in Sections 43-47-18 and 43-47-19, unless the prosecution for such offense be commenced within five (5) years next after the commission thereof. A person shall not be prosecuted for larceny of timber as described in Section 97-17-59, unless the prosecution for such offense be commenced within six (6) years next after the commission thereof. A person shall not be prosecuted for any other offense not listed in this section



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2539

unless the prosecution for such offense be commenced within two (2) years next after the commission thereof. Nothing contained in this section shall bar any prosecution against any person who shall abscond or flee from justice, or shall absent himself from this state or out of the jurisdiction of the court, or so conduct himself that he cannot be found by the officers of the law, or that process cannot be served upon him.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

**Mississippi Legislature  
2012 Regular Session  
Senate Bill 2549**

**Description:** Counterfeit goods; remove disclosure requirement to purchaser.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Judiciary, Division B
- 2 03/06 (S) Title Suff Do Pass
- 3 03/08 (S) Passed *(Vote)*
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Judiciary B
- 7 03/29 (H) Title Suff Do Pass As Amended
- 8 04/05 (H) Amendment Tabled
- 9 04/05 (H) Passed *(Vote)*
- 10 04/09 (H) Transmitted To Senate
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/12 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Amendments:**

  [H] Committee Amendment No 1 *Tabled*

**Code Section:** A 097-0021-0057

**----- Additional Information -----**

**Senate Committee:** Judiciary, Division B

**House Committee:** Judiciary B

**Principal Author:** Bryan

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2549

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Bryan, Jackson (11th)

To: Judiciary, Division B

### SENATE BILL NO. 2549

AN ACT TO AMEND SECTION 97-21-57, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT SELLING OR VENDING OF COUNTERFEIT GOODS IS PROHIBITED WHETHER DISCLOSURE IS MADE TO THE PURCHASER OR NOT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 97-21-57, Mississippi Code of 1972, is amended as follows:

97-21-57. (1) Every person who shall sell, vend, or possess with intent to sell or vend any goods, wares, or merchandise having thereon any forged or counterfeit stamp or label, imitating, resembling, or purporting to be the stamp or label of any mechanic or manufacturer, knowing the same to be forged or counterfeited, and resembling or purporting to be imitations of the stamps or labels of such mechanic or manufacturer \* \* \* shall be punished as follows:

(a) If the goods or services to which the forged or counterfeit representation, likeness, similitude, copy, or imitation of the private stamp, wrappers, or labels are attached or affixed, or in connection with which they are used, or to which the offender intended they be attached or affixed, or in connection with which the offender intended they be used, have, in the aggregate, a retail value of the goods if they were not forged or counterfeited of One Thousand Dollars (\$1,000.00), or more, the person shall be guilty of a felony and, upon conviction, may be imprisoned for up to five (5) years and fined up to Ten Thousand Dollars (\$10,000.00); or

(b) If the goods or services to which the forged or counterfeit representation, likeness, similitude, copy, or

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2549

imitation of the private stamp, wrappers, or labels are attached or affixed, or in connection with which they are used, or to which the offender intended they be attached or affixed, or in connection with which the offender intended they be used, have, in the aggregate, a retail value of the goods if they were not forged or counterfeited of less than One Thousand Dollars (\$1,000.00), the person shall be guilty of a misdemeanor and, upon conviction, may be imprisoned for up to one (1) year and fined up to Five Thousand Dollars (\$5,000.00).

(2) Property used in any way to violate the provisions of this section shall be subject to forfeiture under Sections 97-21-101 and 97-21-103.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2552

**Description:** Armed Forces Absentee Voting Law; applications may be signed by electronic signature.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* VRA

**History of Actions:**

- 1 02/20 (S) Referred To Elections
- 2 03/05 (S) Title Suff Do Pass Comm Sub
- 3 03/13 (S) Committee Substitute Adopted
- 4 03/13 (S) Passed */Vote/*
- 5 03/15 (S) Transmitted To House
- 6 03/19 (H) Referred To Military Affairs;Apportionment and Elections
- 7 03/21 (H) DR - TSDP: MA To AE
- 8 03/29 (H) DR - TSDP: AE To MA
- 9 03/29 (H) Title Suff Do Pass
- 10 04/10 (H) Passed */Vote/*
- 11 04/11 (H) Transmitted To Senate
- 12 04/17 (S) Enrolled Bill Signed
- 13 04/17 (H) Enrolled Bill Signed
- 14 04/23 Approved by Governor

**Code Section:** A 023-0015-0673, A 023-0015-0687, A 023-0015-0699, A 023-0015-0637, A 023-0015-0721

----- Additional Information -----

**Senate Committee:** Elections

**House Committee:** Military Affairs, Apportionment and Elections

**Principal Author:** McDaniel

**Additional Authors:** Blount, Watson



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2552

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) McDaniel, Blount, Watson

To: Elections

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2552

AN ACT TO AMEND SECTION 23-15-673, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DEFINITION OF THE TERM "ABSENT VOTER" IN THE ARMED SERVICES ABSENTEE VOTING LAW; TO AMEND SECTION 23-15-687, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT UNDER THE ARMED SERVICES ABSENTEE VOTING LAW ABSENT VOTERS MAY SIGN APPLICATIONS FOR ABSENTEE BALLOTS BY ELECTRONIC SIGNATURE; TO AMEND SECTION 23-15-699, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A BALLOT RETURNED BY AN ABSENT VOTER AS DEFINED IN THE ARMED FORCES ABSENTEE VOTING LAW MUST BE RECEIVED BY THE REGISTRAR BY 7:00 P.M. ON THE DATE OF THE ELECTION; TO AMEND SECTIONS 23-15-637 AND 23-15-721, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 23-15-673, Mississippi Code of 1972, is amended as follows:

23-15-673. (1) For the purposes of this subarticle, the term "absent voter" shall mean and include the following persons if they are absent from their county of residence and are otherwise qualified to vote in Mississippi:

(a) Any enlisted or commissioned members, male or female, of the United States Army, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Navy, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Air Force, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Marines, or any of its respective components or various divisions thereof; or any persons in any division of the armed services of the United States, who are citizens of Mississippi;

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(b) Any member of the Merchant Marine and the American Red Cross who is a citizen of Mississippi;

(c) Any disabled war veteran who is a patient in any hospital and who is a citizen of Mississippi;

(d) Any civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and who is a citizen of Mississippi;

(e) Any citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia;

(f) Any citizen of Mississippi enrolled as a student at a United States Military Academy.

(2) The spouse and dependents of any absent voter as set out in paragraphs (a), (b), (c), (d), (e) and (f) of subsection (1) of this section shall also be included in the meaning of absent voter and may register to vote and vote an absentee ballot as provided in this subarticle if also absent from the county of their residence on the date of the election and otherwise qualified to vote in Mississippi.

(3) For the purpose of this subarticle, the term "election" shall mean and include the following sets of elections: special and runoff special elections, preferential and general elections, first and second primary elections or general elections without preferential elections, whichever system is applicable.

**SECTION 2.** Section 23-15-687, Mississippi Code of 1972, is amended as follows:

23-15-687. (1) The registrar shall keep all applications for absentee ballots and shall, within twenty-four (24) hours, if possible, send to the absent voter on whose behalf the application is made, the proper affidavit and the proper ballot or ballots applicable to the elections.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2552

(2) One (1) application for an absentee ballot shall serve as a request by the applicant for an absentee ballot for:

(a) The next federal general election, including all primary elections associated with the election;

(b) All state and county primary and general elections that occur after the receipt of the application by the registrar through the date of the next federal general election that occurs after the receipt of the application by the registrar.

(3) The registrar shall preserve all applications for absentee ballots for one (1) year as a record to be furnished to any court or other duly constituted authority for inspection or evidence if properly requested.

(4) If the registrar rejects an application for an absentee ballot or denies a request to register to vote from a uniformed services applicant or an overseas voter, the registrar shall provide the person with the reasons for the rejection.

(5) Any runoff election for a federal election shall be considered a continuation of such federal election.

(6) An absent voter as defined in Section 23-15-673(1) may sign an absentee ballot application by electronic signature. The Secretary of State shall adopt rules necessary to implement this subsection.

**SECTION 3.** Section 23-15-699, Mississippi Code of 1972, is amended as follows:

23-15-699. (1) Absent voters who have requested to receive absentee ballots and balloting materials may choose to receive such ballots and balloting materials by mail, facsimile device (FAX) or electronic mail delivery (e-mail). The Secretary of State shall establish procedures that allow an absent voter to make the choice authorized by this subsection.

(2) Consistent with the choice that the absent voter exercises pursuant to subsection (1) of this section, the registrar shall, in addition to mail, be authorized to use

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electronic facsimile (FAX) devices and electronic mail delivery (e-mail) to transmit balloting materials and absentee ballots. If the absent voter does not indicate a preference, delivery of such information shall be by mail.

(3) The registrar is authorized to receive by electronic facsimile (FAX) devices and electronic mail delivery (e-mail):

(a) Voted absentee ballots;

(b) Completed federal postcard applications as described in Section 23-15-677, which shall serve to request absentee ballots or to register to vote or to do both simultaneously; and

(c) Completed Federal Write-In-Absentee Ballots as described in Section 23-15-692.

(4) Once the registrar has received a voted absentee ballot pursuant to this section, he shall place the ballot in an absentee ballot envelope designated for absentee ballots under this subarticle and fill out the required information on the envelope. The registrar shall then notate on the envelope that the ballot was received under this section and a signature across the flap of the envelope shall not be required. Except as provided in this section, absentee ballots received under this subsection shall be treated in the same manner as other absentee ballots received under this subarticle.

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

(6) Each circuit clerk shall furnish a suitable electronic mail delivery (e-mail) address that can be used to allow absent voters to comply with the provisions of this subarticle. Absentee



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ballots returned by any absent voter as defined in Section 23-15-673 must be received by the registrar by 7:00 p.m. on the date of the election.

**SECTION 4.** Section 23-15-637, Mississippi Code of 1972, is amended as follows:

23-15-637. Absentee ballots received by mail, except presidential ballots as provided for in Sections 23-15-731 and 23-15-733 and except as otherwise provided by Section 23-15-699, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted. All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt.

**SECTION 5.** Section 23-15-721, Mississippi Code of 1972, is amended as follows:

23-15-721. (1) Electors temporarily residing outside the county and obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715 shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter. The elector shall exhibit to such official his absentee ballot unmarked and thereupon proceed in secret to fill in his ballot. After the elector has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him. After he has sealed the envelope he shall deliver it to the official before whom he is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635,



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which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein said elector is qualified to vote. Except as otherwise provided by Section 23-15-699 and excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, the ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted.

**SECTION 6.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

**SECTION 7.** This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2557

**Description:** Tidelands; residential property owners not required to obtain a tidelands lease.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Ports and Marine Resources
- 2 02/29 (S) Title Suff Do Pass
- 3 03/12 (S) Passed (Vote)
- 4 03/13 (S) Transmitted To House
- 5 03/14 (H) Referred To Marine Resources
- 6 03/28 (H) Title Suff Do Pass
- 7 04/04 (H) Passed (Vote)
- 8 04/05 (H) Transmitted To Senate
- 9 04/11 (S) Enrolled Bill Signed
- 10 04/11 (H) Enrolled Bill Signed
- 11 04/18 Approved by Governor

**Code Section:** A 029-0015-0005

----- Additional Information -----

**Senate Committee:** Ports and Marine Resources

**House Committee:** Marine Resources

**Principal Author:** Tindell

**Additional Authors:** Gollott, Wiggins, Polk, Hudson, Jordan, Jolly, Sojourner, Smith, Jones, Watson, Doty, Massey, Parks, Gandy, Harkins, Hill, Collins, Montgomery, Moran, Stone, Turner, Hale, Flowers, Fillingane, Chassaniol, Simmons (13th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2557

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tindell, Gollott, Wiggins,  
Polk, Hudson, Jordan, Jolly, Sojourner,  
Smith, Jones, Watson, Doty, Massey, Parks,  
Gandy, Harkins, Hill, Collins, Montgomery,  
Moran, Stone, Turner, Hale, Flowers,  
Fillingane, Chassaniol, Simmons (13th)

To: Ports and Marine  
Resources

### SENATE BILL NO. 2557

AN ACT TO AMEND SECTION 29-15-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT RESIDENTIAL PROPERTY OWNERS SHALL NOT BE REQUIRED TO OBTAIN A TIDELANDS LEASE FOR EXERCISING THEIR COMMON LAW AND STATUTORY LITTORAL AND RIPARIAN RIGHTS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 29-15-5, Mississippi Code of 1972, is amended as follows:

29-15-5. (1) Tidelands and submerged lands are held by the state in trust for use of all the people, and are so held in their character as the beds and shores of the sea and its tidally affected arms and tributaries for the purposes defined by common law and statutory law. Littoral and riparian property owners have common law and statutory rights under the Coastal Wetlands Protection Law which extend into the waters and beyond the low tide line, and the state's responsibilities as trustee extends to such owners as well as to the other members of the public.

(2) Residential property owners shall not be required to obtain a tidelands lease for exercising their common law and statutory littoral and riparian rights.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2567

**Description:** Local governments; revise ability of municipal and county governing authorities to invest surplus funds.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Accountability, Efficiency, Transparency
- 2 03/02 (S) Title Suff Do Pass
- 3 03/08 (S) Passed {Vote}
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Municipalities;County Affairs
- 7 03/27 (H) DR - TSDP: MU To CA
- 8 03/28 (H) DR - TSDP: CA To MU
- 9 03/28 (H) Title Suff Do Pass
- 10 04/04 (H) Passed {Vote}
- 11 04/04 (H) Motion to Reconsider Entered (Brown (66th), Blackmon, Myers)
- 12 04/04 (H) Motion to Reconsider W/Drawn
- 13 04/05 (H) Transmitted To Senate
- 14 04/11 (S) Enrolled Bill Signed
- 15 04/11 (H) Enrolled Bill Signed
- 16 04/18 Approved by Governor

**Code Section:** A 021-0033-0323, A 027-0105-0315, BF 019-0009-0029

---- Additional Information ----

**Senate Committee:** Accountability, Efficiency, Transparency

**House Committee:** Municipalities, County Affairs

**Principal Author:** Longwitz

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2567

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Longwitz, Jackson (11th)

To: Accountability,  
Efficiency, Transparency

### SENATE BILL NO. 2567

AN ACT TO AMEND SECTION 21-33-323, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY TO INVEST A MUNICIPALITY'S SURPLUS FUNDS; TO AMEND SECTION 27-105-315, MISSISSIPPI CODE OF 1972, TO REVISE THE QUALIFICATIONS OF A COUNTY DEPOSITORY; TO BRING FORWARD SECTION 19-9-29, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE INVESTMENT OF A COUNTY'S SURPLUS FUNDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 21-33-323, Mississippi Code of 1972, is amended as follows:

21-33-323. (1) Whenever any municipality shall have on hand any bond and interest funds, any funds derived from the sale of bonds, special funds, or any other funds in excess of the sums which will be required for immediate expenditure and which are not needed or cannot by law be used for the payment of the current obligations or expenses of such municipality, the governing authorities of such municipality shall have the power and authority to invest such excess funds in any bonds or other direct obligations of the United States of America or the State of Mississippi, or of any county or municipality of this state, or of any school district, which such county or municipal or school district bonds have been approved by a reputable bond attorney or have been validated by a decree of the chancery court, or in obligations issued or guaranteed in full as to principal and interest by the United States of America which are subject to a repurchase agreement with a qualified depository. In any event the bonds or obligations in which such funds are invested shall mature or be redeemable prior to the time the funds so invested will be needed for expenditure.



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(2) However, such excess funds may first be offered for investment in interest-bearing accounts with or through municipal depositories serving in accordance with Section 27-105-353 at a rate of interest not less than a simple interest rate numerically equal to the average bank discount rate on United States Treasury bills of comparable maturity. The rate of interest established herein shall be the minimum rate of interest and there shall be no maximum rate of interest.

(3) Such excess funds may also be invested in interest-bearing accounts in or through state depositories located in such municipality to the same extent as such depositories are eligible for invested state funds.

(4) When bonds or other obligations have been so purchased, the same may be sold or surrendered for redemption at any time by order or resolution of the governing authorities of the municipality, and the mayor of the municipality, when authorized by such order or resolution, shall have the power and authority to execute all instruments and take such other action as may be necessary to effectuate the sale or redemption thereof.

(5) When such bonds or other obligations are sold or redeemed, the proceeds thereof, including accrued interest thereon, shall be paid into the same fund as that from which the investment was made and shall in all respects be dealt with as are other monies in such fund.

(6) Except as hereinafter provided, any interest derived from the investments authorized in this section may, as an alternative, be deposited into the general fund of the municipality. Any interest derived from the investment of sums received under the terms of the federal State and Local Fiscal Assistance Act of 1972 and any subsequent revisions or reenactments of that act shall be paid into the same fund as that from which the investment was made. Any interest derived from the investment of school bond funds shall be handled as provided in

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2567

Section 37-59-43. Any interest derived from investment of other bond proceeds or from investment of any bond and interest fund, bond reserve fund or bond redemption sinking fund shall be deposited either in the same fund from which the investment was made or in the bond and interest fund established for payment of the principal or interest on the bonds. Any interest derived from special purpose funds which are outside the function of general municipal government shall be paid into that special purpose fund.

(7) The authority granted by this section shall be cumulative and in addition to any other law relating to the investment of funds by municipalities.

**SECTION 2.** Section 27-105-315, Mississippi Code of 1972, is amended as follows:

27-105-315. (1) Any financial institution in a county, or in an adjoining county where there is no financial institution in the county qualifying, whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation may qualify as a county depository, if the institution qualifies as a public funds depository under Section 27-105-5 or a public funds guaranty pool member under Sections 27-105-5 and 27-105-6. The qualified financial institution shall secure those deposits by placing qualified securities on deposit with the State Treasurer as provided in Section 27-105-5.

(2) Notwithstanding the foregoing, any financial institution whether or not meeting the prescribed ratio requirement whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may receive county funds in an amount not exceeding the amount that is insured by that insurance corporation and may qualify as a county depository to the extent of that insurance.

(3) For purposes of the foregoing subsection (2), a deposit or investment shall be within the amount that is insured by that

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2567

insurance corporation if the deposit or investment is made on the following conditions:

- (a) The financial institution arranges for the investment of the funds in interest-bearing accounts in one or more banks or savings and loan associations wherever located in the United States, for the account of the public depositor;
- (b) The full amount of the principal and accrued interest of each such interest-bearing account is insured by the Federal Deposit Insurance Corporation;
- (c) The financial institution acts as custodian for the public depositor with respect to the funds invested in the public depositor's account; and
- (d) At the same time that such interest-bearing accounts are invested, the financial institution receives an amount of deposits from customers of other financial institutions located in the United States equal to or greater than the amount of the funds invested by the public depositor through the financial institution.

**SECTION 3.** Section 19-9-29, Mississippi Code of 1972, is brought forward as follows:

19-9-29. Whenever any county shall have on hand any bond and interest funds, any funds derived from the sale of bonds, special funds, or any other funds in excess of the sums which will be required to meet the current needs and demands of no more than seven (7) business days, the board of supervisors of such county shall invest such excess funds in the following manner:

- (a) Such excess funds shall be invested for periods of from fourteen (14) days to one (1) year in interest-bearing time certificates of deposit with or through county depositories serving in accordance with Section 27-105-303 which are willing to accept the same, at a negotiated rate of interest. The negotiated rate of interest shall be at the highest rate possible at the date of purchase or investment for such time certificates of deposit or

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2567

interest-bearing accounts, but such rate of interest shall not be less than the rate of interest paid to the general public on passbook savings. The rate of interest established herein shall be the minimum rate of interest and there shall be no maximum rate of interest.

(b) The balance, if any, of such excess funds shall be invested in interest-bearing time certificates of deposit for the same maturity periods and at the same rate of interest as prescribed in paragraph (a) of this section in or through state depositories located in such county which are willing to accept the same, to the same extent as such depositories are eligible for invested state funds.

(c) To the extent that the board of supervisors finds that such excess funds cannot be invested pursuant to paragraphs (a) and (b) of this section for the stated maturity of from fourteen (14) days to one (1) year, the board of supervisors may invest such funds in any bonds or other direct obligations of the United States of America, the State of Mississippi, or any county, municipality or school district of this state, if such county, municipal or school district bonds have been approved by a reputable bond attorney or have been validated by a decree of the chancery court, or the board of supervisors may invest such funds, together with any other funds required for current operation, in obligations issued or guaranteed in full as to principal and interest by the United States of America which are subject to a repurchase agreement with a county or state depository, or the board of supervisors may deposit such funds in interest-bearing accounts with a county or state depository. Such bonds or obligations purchased may have any maturity date, provided that they shall mature or be redeemable prior to the time that the funds so invested will be needed for expenditure.

Any excess funds invested in certificates of deposit or interest-bearing accounts with county or state depositories under



this section shall be secured in the manner required by Section 27-105-315. The proceeds of such certificates of deposit shall be immediately reinvested on the date of maturity in accordance with paragraphs (a), (b) and (c) of this section, unless the board of supervisors determines that such funds are required for current operation.

When bonds or other obligations have been purchased, the same may be sold or surrendered for redemption at any time, except certificates of deposit which must mature, by order or resolution of such board of supervisors. The president of the board of supervisors, when authorized by such order or resolution, shall have the power and authority to execute all instruments and take such other action as may be necessary to effectuate the sale or redemption thereof. When such bonds or other obligations are sold or redeemed, the proceeds thereof, including accrued interest thereon, shall be paid into the same fund as that from which the investment was made and shall in all respects be dealt with as are other monies in such fund. Except as hereinafter provided, any interest derived from the investments authorized in this section may, as an alternative, be deposited into the general fund of the county. Any interest derived from the investment of sums received under the terms of the federal State and Local Fiscal Assistance Act of 1972, and any subsequent revisions or reenactments of that act, shall be paid into the same fund as that from which the investment was made. Any interest derived from the investment of school bond funds shall be handled as provided in Section 37-59-43. Any interest derived from investment of other bond proceeds or from investment of any bond and interest fund, bond reserve fund or bond redemption sinking fund shall be deposited either in the same fund from which the investment was made or in the bond and interest fund established for payment of the principal or interest on the bonds. Any interest derived from



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2567

special purpose funds which are outside the function of general county government shall be paid into that special purpose fund.

**SECTION 4.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2572

**Description:** USM; authorize to borrow funds to establish and operate a certified registered nurse anesthetist program.

**Background Information:**

*Disposition:* Law

*Deadline:* Revenue

*Revenue:* Yes

*Vote type required:* Three/Fifths

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Universities and Colleges
- 2 03/01 (S) Title Suff Do Pass
- 3 03/07 (S) Passed {Vote}
- 4 03/08 (S) Transmitted To House
- 5 03/14 (H) Referred To Universities and Colleges
- 6 03/27 (H) Title Suff Do Pass
- 7 04/04 (H) Point of Order Raised
- 8 04/04 (H) Set Aside-Pend Ruling of Chair
- 9 04/04 (H) Amendment Ruled Improper
- 10 04/04 (H) Passed {Vote}
- 11 04/04 (H) Motion to Reconsider Entered (Clark, Mettetal, Holloway, Hines)
- 12 04/05 (H) Motion to Reconsider Tabled
- 13 04/05 (H) Transmitted To Senate
- 14 04/11 (S) Enrolled Bill Signed
- 15 04/11 (H) Enrolled Bill Signed
- 16 04/18 Approved by Governor

**Amendments:**

 [H] Amendment No 1 *Not Germane*

----- Additional Information -----

**Senate Committee:** Universities and Colleges

**House Committee:** Universities and Colleges

**Principal Author:** Fillingane

**2012 GENERAL LAWS OF MISSISSIPPI, SB 2572**

*Additional Authors:* Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2572

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Fillingane, Jackson (11th)

To: Universities and  
Colleges

### SENATE BILL NO. 2572

AN ACT TO AUTHORIZE THE UNIVERSITY OF SOUTHERN MISSISSIPPI, WITH THE APPROVAL OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, TO BORROW FUNDS FOR THE PURPOSE OF ESTABLISHING AND OPERATING A CERTIFIED REGISTERED NURSE ANESTHETIST EDUCATIONAL AND TRAINING PROGRAM WITHIN THE UNIVERSITY'S EXISTING SCHOOL OF NURSING ON ITS HATTIESBURG CAMPUS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The University of Southern Mississippi, with the approval of the Board of Trustees of State Institutions of Higher Learning, is hereby granted the legal authority to borrow funds for the purpose of establishing and operating a certified registered nurse anesthetist educational and training program within the university's existing School of Nursing on its Hattiesburg campus. The purposes for which the funds from the loan may be utilized shall include, but not be limited to, any and all start-up costs, operation costs, personnel costs, equipment and educational materials.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2605

**Description:** Income tax; authorize a free online preparation and filing services to certain Mississippi taxpayers.

**Background Information:**

*Disposition:* Law  
*Deadline:* General Bill/Constitutional Amendment  
*Revenue:* No  
*Vote type required:* Majority  
*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Finance
- 2 03/01 (S) Title Suff Do Pass Comm Sub
- 3 03/12 (S) Committee Substitute Adopted
- 4 03/12 (S) Passed {Vote}
- 5 03/14 (S) Transmitted To House
- 6 03/19 (H) Referred To Ways and Means
- 7 03/29 (H) Title Suff Do Pass
- 8 04/04 (H) Passed {Vote}
- 9 04/05 (H) Transmitted To Senate
- 10 04/11 (S) Enrolled Bill Signed
- 11 04/11 (H) Enrolled Bill Signed
- 12 04/18 Approved by Governor

----- Additional Information -----

*Senate Committee:* Finance

*House Committee:* Ways and Means

*Principal Author:* Hale



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2605

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Hale

To: Finance

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2605

AN ACT TO AUTHORIZE THE COMMISSIONER OF REVENUE TO ESTABLISH A PROGRAM TO OFFER FREE ONLINE INCOME TAX PREPARATION AND FILING SERVICES TO MISSISSIPPI TAXPAYERS WHO ARE ELIGIBLE TO UTILIZE THE FREE FILING PROGRAM OFFERED BY THE UNITED STATES INTERNAL REVENUE SERVICE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The Commissioner of Revenue may establish a program to offer free online income tax preparation and filing services to Mississippi taxpayers similar to the free filing program offered by the United States Internal Revenue Service. To implement this program, the Commissioner of Revenue may enter into an agreement with providers of electronic tax preparation and filing services to offer the services at no cost to the State of Mississippi and free of charge to Mississippi taxpayers who are eligible to utilize the free filing program offered by the Internal Revenue Service. The Department of Revenue may place links to the free file services on its website.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2607

**Description:** Local option law; revise definition of the term "restaurant."

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Economic Development;Tourism
- 2 02/29 (S) DR - TSDPCS: EC To TO
- 3 03/01 (S) Title Suff Do Pass Comm Sub
- 4 03/12 (S) Committee Substitute Adopted
- 5 03/12 (S) Passed {Vote}
- 6 03/14 (S) Transmitted To House
- 7 03/19 (H) Referred To Ways and Means
- 8 04/03 (H) Title Suff Do Pass
- 9 04/04 (H) Passed {Vote}
- 10 04/05 (H) Transmitted To Senate
- 11 04/11 (S) Enrolled Bill Signed
- 12 04/11 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 067-0001-0005

----- Additional Information -----

**Senate Committee:** Economic Development, Tourism

**House Committee:** Ways and Means

**Principal Author:** Tollison

**Additional Authors:** Jackson (11th), Horhn

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2607

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Tollison, Jackson (11th),  
Horhn

To: Economic Development;  
Tourism

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2607

AN ACT TO AMEND SECTION 67-1-5, MISSISSIPPI CODE OF 1972, TO INCLUDE IN THE DEFINITION OF "RESTAURANT" UNDER THE LOCAL OPTION ALCOHOLIC BEVERAGE CONTROL LAW, ANY PRIVATELY OWNED BUSINESS IN A BUILDING IN A HISTORIC DISTRICT WHERE THE DISTRICT IS LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES AND WHERE THE BUSINESS REGULARLY UTILIZES 10,000 SQUARE FEET OR MORE IN A BUILDING FOR CERTAIN PURPOSES THAT SERVES FOOD TO GUESTS FOR COMPENSATION WITHIN THE BUILDING AND DERIVES THE MAJORITY OF ITS REVENUE FROM CERTAIN EVENT-RELATED FEES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 67-1-5, Mississippi Code of 1972, is amended as follows:

67-1-5. For the purposes of this chapter and unless otherwise required by the context:

(a) "Alcoholic beverage" means any alcoholic liquid, including wines of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include wine containing five percent (5%) or less of alcohol by weight and shall not include beer containing not more than five percent (5%) of alcohol by weight, as provided for in Section 67-3-5, Mississippi Code of 1972, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes.

(b) "Alcohol" means the product of distillation of any fermented liquid, whatever the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol.

(c) "Distilled spirits" means any beverage containing more than four percent (4%) of alcohol by weight produced by

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2607

distillation of fermented grain, starch, molasses or sugar, including dilutions and mixtures of these beverages.

(d) "Wine" or "vinous liquor" means any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries and made in accordance with the revenue laws of the United States.

(e) "Person" means and includes any individual, partnership, corporation, association or other legal entity whatsoever.

(f) "Manufacturer" means any person engaged in manufacturing, distilling, rectifying, blending or bottling any alcoholic beverage.

(g) "Wholesaler" means any person, other than a manufacturer, engaged in distributing or selling any alcoholic beverage at wholesale for delivery within or without this state when such sale is for the purpose of resale by the purchaser.

(h) "Retailer" means any person who sells, distributes, or offers for sale or distribution, any alcoholic beverage for use or consumption by the purchaser and not for resale.

(i) "State Tax Commission," "commission" or "department" means the Department of Revenue of the State of Mississippi, which shall create a division in its organization to be known as the Alcoholic Beverage Control Division. Any reference to the commission or the department hereafter means the powers and duties of the Department of Revenue with reference to supervision of the Alcoholic Beverage Control Division.

(j) "Division" means the Alcoholic Beverage Control Division of the Department of Revenue.

(k) "Municipality" means any incorporated city or town of this state.

(l) "Hotel" means an establishment within a municipality, or within a qualified resort area approved as such by the department, where, in consideration of payment, food and

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2607

lodging are habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations. Hotels in towns or cities of more than twenty-five thousand (25,000) population are similarly defined except that they must have fifty (50) or more sleeping rooms. Any such establishment described in this paragraph with less than fifty (50) beds shall operate one or more regular dining rooms designed to be constantly frequented by customers each day. When used in this chapter, the word "hotel" shall also be construed to include any establishment that meets the definition of "bed and breakfast inn" as provided in this section.

(m) "Restaurant" means:

(i) A place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day; the service of such food as sandwiches and salads only shall not be deemed in compliance with this requirement. Except as otherwise provided in this paragraph, no place shall qualify as a restaurant under this chapter unless twenty-five percent (25%) or more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to twenty-five percent (25%) or more of total revenue; or

(ii) Any privately owned business located in a building in a historic district where the district is listed in the National Register of Historic Places, where the building has a total occupancy rating of not less than one thousand (1,000) and where the business regularly utilizes ten thousand (10,000) square



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feet or more in the building for live entertainment, including not only the stage, lobby or area where the audience sits and/or stands, but also any other portion of the building necessary for the operation of the business, including any kitchen area, bar area, storage area and office space, but excluding any area for parking. In addition to the other requirements of this subparagraph, the business must also serve food to guests for compensation within the building and derive the majority of its revenue from event-related fees, including, but not limited to, admission fees or ticket sales to live entertainment in the building, and from the rental of all or part of the facilities of the business in the building to another party for a specific event or function.

(n) "Club" means an association or a corporation:

(i) Organized or created under the laws of this state for a period of five (5) years prior to July 1, 1966;

(ii) Organized not primarily for pecuniary profit but for the promotion of some common object other than the sale or consumption of alcoholic beverages;

(iii) Maintained by its members through the payment of annual dues;

(iv) Owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests;

(v) The affairs and management of which are conducted by a board of directors, board of governors, executive committee, or similar governing body chosen by the members at a regular meeting held at some periodic interval; and

(vi) No member, officer, agent or employee of which is paid, or directly or indirectly receives, in the form of a salary or other compensation any profit from the distribution or sale of alcoholic beverages to the club or to members or guests of

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2607

the club beyond such salary or compensation as may be fixed and voted at a proper meeting by the board of directors or other governing body out of the general revenues of the club.

The department may, in its discretion, waive the five-year provision of this paragraph. In order to qualify under this paragraph, a club must file with the department, at the time of its application for a license under this chapter, two (2) copies of a list of the names and residences of its members and similarly file, within ten (10) days after the election of any additional member, his name and address. Each club applying for a license shall also file with the department at the time of the application a copy of its articles of association, charter of incorporation, bylaws or other instruments governing the business and affairs thereof.

(o) "Qualified resort area" means any area or locality outside of the limits of incorporated municipalities in this state commonly known and accepted as a place which regularly and customarily attracts tourists, vacationists and other transients because of its historical, scenic or recreational facilities or attractions, or because of other attributes which regularly and customarily appeal to and attract tourists, vacationists and other transients in substantial numbers; however, no area or locality shall so qualify as a resort area until it has been duly and properly approved as such by the department.

(i) The department may approve an area or locality outside of the limits of an incorporated municipality that is in the process of being developed as a qualified resort area if such area or locality, when developed, can reasonably be expected to meet the requisites of the definition of the term "qualified resort area." In such a case, the status of qualified resort area shall not take effect until completion of the development.

(ii) The term includes any state park which is declared a resort area by the department; however, such

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declaration may only be initiated in a written request for resort area status made to the department by the Executive Director of the Department of Wildlife, Fisheries and Parks, and no permit for the sale of any alcoholic beverage, as defined in this chapter, except an on-premises retailer's permit, shall be issued for a hotel, restaurant or bed and breakfast inn in such park.

(iii) The term includes:

1. The clubhouses associated with the state park golf courses at the Lefleur's Bluff State Park, the John Kyle State Park, the Percy Quin State Park and the Hugh White State Park;

2. The clubhouse and associated golf course where the golf course is adjacent to one or more planned residential developments and the golf course and all such developments collectively include at least seven hundred fifty (750) acres and at least four hundred (400) residential units;

3. Any facility located on property that is a game reserve with restricted access that consists of at least three thousand (3,000) contiguous acres with no public roads and that offers as a service hunts for a fee to overnight guests of the facility;

4. Any facility located on federal property surrounding a lake and designated as a recreational area by the United States Army Corps of Engineers that consists of at least one thousand five hundred (1,500) acres;

5. Any facility that is located in a municipality that is bordered by the Pearl River, traversed by Mississippi Highway 25, adjacent to the boundaries of the Jackson International Airport and is located in a county which has voted against coming out from under the dry law; however, any such facility may only be located in areas designated by the governing authorities of such municipality;

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2607

6. Any municipality with a population in excess of ten thousand (10,000) according to the latest federal decennial census that is located in a county that is bordered by the Pearl River and is not traversed by Interstate Highway 20, with a population in excess of forty-five thousand (45,000) according to the latest federal decennial census;

7. The West Pearl Restaurant Tax District as defined in Chapter 912, Local and Private Laws of 2007.

The status of these municipalities, districts, clubhouses, facilities and golf courses described in subparagraph (iii) of this paragraph (o) as qualified resort areas does not require any declaration of same by the department.

(p) "Native wine" means any product, produced in Mississippi for sale, having an alcohol content not to exceed twenty-one percent (21%) by weight and made in accordance with revenue laws of the United States, which shall be obtained primarily from the alcoholic fermentation of the juice of ripe grapes, fruits, berries or vegetables grown and produced in Mississippi; provided that bulk, concentrated or fortified wines used for blending may be produced without this state and used in producing native wines. The department shall adopt and promulgate rules and regulations to permit a producer to import such bulk and/or fortified wines into this state for use in blending with native wines without payment of any excise tax that would otherwise accrue thereon.

(q) "Native winery" means any place or establishment within the State of Mississippi where native wine is produced in whole or in part for sale.

(r) "Bed and breakfast inn" means an establishment within a municipality where in consideration of payment, breakfast and lodging are habitually furnished to travelers and wherein are located not less than eight (8) and not more than nineteen (19) adequately furnished and completely separate sleeping rooms with



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2607

adequate facilities, that persons usually apply for and receive as overnight accommodations; however, such restriction on the minimum number of sleeping rooms shall not apply to establishments on the National Register of Historic Places. No place shall qualify as a bed and breakfast inn under this chapter unless on the date of the initial application for a license under this chapter more than fifty percent (50%) of the sleeping rooms are located in a structure formerly used as a residence.

(s) "Board" shall refer to Board of Tax Appeals of the State of Mississippi.

(t) "Spa facility" means an establishment within a municipality or qualified resort area and owned by a hotel where, in consideration of payment, patrons receive from licensed professionals a variety of private personal care treatments such as massages, facials, waxes, exfoliation and hairstyling.

(u) "Art studio or gallery" means an establishment within a municipality or qualified resort area, that is in the sole business of allowing patrons to view and/or purchase paintings and other creative artwork.

(v) "Cooking school" means an establishment within a municipality or qualified resort area and owned by a nationally recognized company that offers an established culinary education curriculum and program where, in consideration of payment, patrons are given scheduled professional group instruction on culinary techniques. For purposes of this paragraph, the definition of cooking school shall not include schools or classes offered by grocery stores, convenience stores or drugstores.

**SECTION 2.** This act shall take effect and be in force from and after its passage.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2609

**Description:** Income tax; extend the repeal date on income tax credit for certain employers sponsoring skills training for employees.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* June 30, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Finance
- 2 03/06 (S) Title Suff Do Pass
- 3 03/12 (S) Passed *{Vote}*
- 4 03/13 (S) Transmitted To House
- 5 03/14 (H) Referred To Ways and Means
- 6 04/02 (H) Title Suff Do Pass
- 7 04/04 (H) Passed *{Vote}*
- 8 04/05 (H) Transmitted To Senate
- 9 04/11 (S) Enrolled Bill Signed
- 10 04/11 (H) Enrolled Bill Signed
- 11 04/18 Approved by Governor

**Code Section:** A 057-0073-0025

----- Additional Information -----

**Senate Committee:** Finance

**House Committee:** Ways and Means

**Principal Author:** Fillingane

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2609

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Fillingane

To: Finance

### SENATE BILL NO. 2609

AN ACT TO AMEND SECTION 57-73-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDES AN INCOME TAX CREDIT FOR CERTAIN EMPLOYERS SPONSORING SKILLS TRAINING FOR EMPLOYEES, TO EXTEND TO JULY 1, 2016, THE DATE OF REPEAL ON THE SECTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 57-73-25, Mississippi Code of 1972, is amended as follows:

57-73-25. (1) A fifty percent (50%) income tax credit shall be granted to any employer (as defined in subsection (4) of this section) sponsoring skills training. The fifty percent (50%) credit shall be granted to employers that participate in employer-sponsored training programs through any community/junior college in the district within which the employer is located or training approved by such community/junior college. The credit is applied to qualified training expenses, which are expenses related to instructors, instructional materials and equipment, and the construction and maintenance of facilities by such employer designated for training purposes which is attributable to training provided through such community/junior college or training approved by such community/junior college. The credits allowed under this section shall only be used by the actual employer qualifying for the credits. The credit shall not exceed fifty percent (50%) of the income tax liability in a tax year and may be carried forward for the five (5) successive years if the amount allowable as credit exceeds the income tax liability in a tax year; however, thereafter, if the amount allowable as a credit exceeds the tax liability, the amount of excess shall not be refundable or carried forward to any other taxable year. The

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2609

credit authorized under this section shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) per employee during any one (1) year. Nothing in this section shall be interpreted in any manner as to prevent the continuing operation of state-supported university programs.

(2) Employer-sponsored training shall include an evaluation by the local community or junior college that serves the employer to ensure that the training provided is job related and conforms to the definition of "skills training" as hereinafter defined.

(3) Employers shall be certified as eligible for the tax credit by the local community or junior college that serves the employer and the Department of Revenue.

(4) For the purposes of this section:

(a) "Skills training" means any employer-sponsored training by an appropriate community/junior college or training approved by such community/junior college that enhances skills that improve job performance. If the employer provides preemployment training, the portion of the preemployment training that involves skills training shall be eligible for the credit.

(b) "Employer-sponsored training" means training provided by the appropriate community/junior college in the district within which the employer is located or training approved by such community/junior college.

(c) "Employer" means those permanent business enterprises as defined and set out in Section 57-73-21.

(5) The tax credits provided for in this section shall be in addition to all other tax credits heretofore granted by the laws of the state.

(6) A community/junior college may commit to provide employer-sponsored skills training programs for an employer for a multiple number of years, not to exceed five (5) years.

(7) The State Board for Community and Junior Colleges shall make a report to the Legislature by January 30 of each year

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2609

summarizing the number of participants, the junior or community college through which the training was offered and the type training offered.

(8) This section shall stand repealed from and after July 1, 2016.

**SECTION 2.** This act shall take effect and be in force from and after June 30, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2670

**Description:** Patient's Right to Informed Health Care Choices Act; enact.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Three/Fifths

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Public Health and Welfare;Judiciary, Division B
- 2 03/01 (S) DR - TSDPCS: PH To JB
- 3 03/06 (S) Title Suff Do Pass Comm Sub
- 4 03/08 (S) Committee Substitute Adopted
- 5 03/08 (S) Passed *(Vote)*
- 6 03/08 (S) Immediate Release
- 7 03/09 (S) Transmitted To House
- 8 03/19 (H) Referred To Public Health and Human Services
- 9 03/22 (H) Title Suff Do Pass
- 10 04/04 (H) Passed *(Vote)*
- 11 04/04 (H) Motion to Reconsider Entered (Myers, Mims, Barker)
- 12 04/05 (H) Motion to Reconsider Tabled
- 13 04/05 (H) Transmitted To Senate
- 14 04/11 (S) Enrolled Bill Signed
- 15 04/11 (H) Enrolled Bill Signed
- 16 04/18 Approved by Governor

**Code Section:** A 073-0009-0061, A 073-0021-0097, A 073-0025-0029, A 073-0026-0005, A 073-0027-0013, A 073-0015-0029, A 073-0019-0023, A 073-0006-0019, A 073-0039-0077

----- **Additional Information** -----

**Senate Committee:** Public Health and Welfare, Judiciary, Division B

**House Committee:** Public Health and Human Services

**Principal Author:** Kirby



*Additional Authors:* Wiggins, Jones, Jackson (11th)

# 2012 GENERAL LAWS OF MISSISSIPPI, SB 2670

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Kirby, Wiggins, Jones,  
Jackson (11th)

To: Public Health and  
Welfare; Judiciary, Division  
B

## COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2670

AN ACT ENTITLED "THE PATIENT'S RIGHT TO INFORMED HEALTH CARE CHOICES ACT"; TO PROVIDE DEFINITIONS; TO REGULATE AND PROVIDE STANDARDS FOR HEALTH CARE PRACTITIONERS' ADVERTISEMENT PRACTICES AND COMMUNICATIONS; TO PROVIDE PENALTIES FOR VIOLATION OF THIS ACT; TO AMEND SECTIONS 73-9-61, 73-21-97, 73-25-29, 73-26-5, 73-27-13, 73-15-29, 73-19-23, 73-6-19 AND 73-39-77, MISSISSIPPI CODE OF 1972, TO INCLUDE VIOLATIONS OF DECEPTIVE ADVERTISEMENT BY HEALTH CARE PRACTITIONERS AS SPECIFIC GROUNDS FOR DISCIPLINARY ACTION AGAINST LICENSEES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** **Title.** This act shall be known and may be cited as "The Patient's Right to Informed Health Care Choices Act."

**SECTION 2.** **Purpose.** The Legislature finds and declares that:

(a) There are a multitude of professional degrees using the term "doctor," including Medical Doctor (M.D.); Doctor of Osteopathic Medicine (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of Chiropractic (D.C.); Doctor of Nursing Practice (D.N.P.); Doctor of Pharmacy (Pharm.D.); and other designations which may be used by health care practitioners.

(b) Choosing a health care provider is one of the most important decisions a patient makes, which should be supported by full disclosure from their health care provider. There are differences regarding the training and qualifications required to earn the professional degrees described in and subject to this act. These differences often concern the training and skills necessary to correctly detect, diagnose, prevent and treat serious health care conditions.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2670

(c) There is a compelling state interest in patients being promptly and clearly informed of the actual training and qualifications of their health care practitioners who provide health care services. This act aims to provide public protection against potentially misleading and deceptive health care advertising that cause patients to have undue expectations regarding their medical treatments and outcomes.

### **SECTION 3. Definitions.** For the purposes of this act:

(a) "Advertisement" means any communication or statement, whether printed, electronic or oral, that names the health care practitioner in relation to his or her practice, profession, or institution in which the individual is employed, volunteers or otherwise provides health care services. This includes business cards, letterhead, patient brochures, email, Internet, audio and video, and any other communication or statement used in the course of business or any other definition provided by regulations of the licensing board of proper jurisdiction.

(b) "Deceptive" or "misleading" includes, but is not limited to, any advertisement or affirmative communication or representation that misstates, falsely describes, holds out or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification or licensure as determined by each respective licensing board.

(c) "Health care practitioner" means any person who engages in acts that are the subject of licensure or regulation. Categories of health care practitioner include:

(i) Practitioners of allopathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery.

(ii) Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic

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surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.

(iii) Practitioners of nursing, signified by the letters "D.N.P.," "N.P.," "R.N.," "L.P.N.," "C.R.N.A.," or any other commonly used signifier to denote a doctorate of nursing practice, nurse practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(iv) Practitioners of podiatry, signified by the letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.

(v) Practitioners of chiropractic, signified by the letters "D.C." or the words chiropractor, doctor of chiropractic or chiropractic physician.

(vi) Practitioners of dentistry, signified by the letters "D.D.S." or "D.M.D.," as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate.

(vii) Practitioners of optometry, signified by the letters "O.D." or the words optometrist or doctor of optometry.

(viii) Practitioners of pharmacy, signified by the letters "BSc.Pharm" or "Pharm.D." or the words pharmacists or doctor of pharmacy.

(ix) Physician assistants, signified by the letters "P.A." or the words physician assistant.

(x) Medical assistants, signified by the letters "M.A." or the words medical assistant.

(xi) Practitioners of audiology, signified by the letters "Au.D.," "Sc.D." or "Ph.D.," or the words audiologist or doctor of audiology.

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(xii) Psychologists, therapists, speech-language pathologists, counselors, or any other health care practitioner not covered under this section, including, but not limited to, those signified by the letters "Ph.D.," "Ed.D.," "P.T.," "M.P.T." or "Psy.D.," or "Sc.D.," as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(d) "Licensee" means a health care practitioner who holds an active license with the licensing board governing his or her practice in this state.

**SECTION 4. Requirements.** (1) An advertisement for health care services that names a health care practitioner must identify the type of license held according to the definitions under this act. The advertisement shall be free from any and all deceptive or misleading information.

(2) A health care practitioner providing health care services in this state must conspicuously post in their office and affirmatively communicate the practitioner's specific licensure as defined under this act. This shall consist of the following: The health care practitioner shall display in his or her office a writing that clearly identifies the type of license held by the health care practitioner. The writing must be of sufficient size so as to be visible and apparent to all current and prospective patients.

(3) A health care practitioner who practices in more than one (1) office shall be required to comply with these requirements in each practice setting.

(4) Health care practitioners working in nonpatient care settings, and who do not have any direct patient care interactions, are not subject to the provisions of this act.



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**SECTION 5. Violations and enforcement.** (1) Failure to comply with any provision under this section shall constitute a violation under this act.

(2) Knowingly aiding, assisting, procuring, employing or advising any unlicensed person or entity to practice or engage in acts contrary to the health care practitioner's degree of licensure shall constitute a violation under this act.

(3) Delegating or contracting for the performance of health care services by a health care practitioner when the licensee delegating or contracting for performance knows, or has reason to know, the person does not have the required authority under the person's licensure, shall constitute a violation under this act.

(4) Violations of this act relating to practitioners of pharmacy shall be regulated in accordance with the restrictions on the use of business name for pharmacists in Section 73-21-109.

(5) Each day that this act is violated shall constitute a separate offense and shall be punishable as such.

(6) Any health care practitioner who violates any provision under this act is guilty of unprofessional conduct and subject to disciplinary action under the appropriate licensure provisions governing the respective health care practitioner.

(7) Any and all fees and other amounts billed to and paid by the patient may be effectively rescinded and refunded. This includes third parties contracted to collect fees on behalf of the health care practitioner, the health care practitioner's employer, or other entity contracting with the health care practitioner as determined by each respective licensing board.

(8) The imposition of professional sanctions, administrative fees or other disciplinary actions shall be publicly reported by the governmental administrative body of proper jurisdiction at its discretion.

(9) Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with

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jurisdiction may seek an injunction or other legal means as appropriate against a person or entity violating this act as determined by each respective licensing board.

(10) A licensing board may only enforce violations of this act with licensees that are subject to its jurisdiction.

**SECTION 6.** Sections 1 through 5 of this act shall stand repealed on July 1, 2016.

**SECTION 7.** Section 73-9-61, Mississippi Code of 1972, is amended as follows:

73-9-61. (1) Upon satisfactory proof, and in accordance with statutory provisions elsewhere set out for such hearings and protecting the rights of the accused as well as the public, the State Board of Dental Examiners may deny the issuance or renewal of a license or may revoke or suspend the license of any licensed dentist or dental hygienist practicing in the State of Mississippi, or take any other action in relation to the license as the board may deem proper under the circumstances, for any of the following reasons:

(a) Misrepresentation in obtaining a license, or attempting to obtain, obtaining, attempting to renew or renewing a license or professional credential by making any material misrepresentation, including the signing in his or her professional capacity any certificate that is known to be false at the time he or she makes or signs the certificate.

(b) Willful violation of any of the rules or regulations duly promulgated by the board, or of any of the rules or regulations duly promulgated by the appropriate dental licensure agency of another state or jurisdiction.

(c) Being impaired in the ability to practice dentistry or dental hygiene with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

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(d) Administering, dispensing or prescribing any prescriptive medication or drug outside the course of legitimate professional dental practice.

(e) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(f) Practicing incompetently or negligently, regardless of whether there is actual harm to the patient.

(g) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that relates to the practice of dentistry or dental hygiene, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(h) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a felony in any jurisdiction, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(i) Delegating professional responsibilities to a person who is not qualified by training, experience or licensure to perform them.

(j) The refusal of a licensing authority of another state or jurisdiction to issue or renew a license, permit or certificate to practice dentistry or dental hygiene in that jurisdiction or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by the licensing authority that prevents or restricts practice in that

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jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(k) Surrender of a license or authorization to practice dentistry or dental hygiene in another state or jurisdiction when the board has reasonable cause to believe that the surrender is made to avoid or in anticipation of a disciplinary action.

(l) Any unprofessional conduct to be determined by the board on a case-by-case basis, which shall include, but not be restricted to, the following:

(i) Committing any crime involving moral turpitude.

(ii) Practicing deceit or other fraud upon the public.

(iii) Practicing dentistry or dental hygiene under a false or assumed name.

(iv) Advertising that is false, deceptive or misleading.

(v) Announcing a specialized practice shall be considered advertising that tends to deceive or mislead the public unless the dentist announcing as a specialist conforms to other statutory provisions and the duly promulgated rules or regulations of the board pertaining to practice of dentistry in the State of Mississippi.

(m) Failure to provide and maintain reasonable sanitary facilities and conditions or failure to follow board rules regarding infection control.

(n) Committing any act which would constitute sexual misconduct upon a patient or upon ancillary staff. For purposes of this subsection, the term sexual misconduct means:

(i) Use of the licensee-patient relationship to engage or attempt to engage the patient in sexual activity; or



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(ii) Conduct of a licensee that is intended to intimidate, coerce, influence or trick any person employed by or for the licensee in a dental practice or educational setting for the purpose of engaging in sexual activity or activity intended for the sexual gratification of the licensee.

(o) Violation of a lawful order of the board previously entered in a disciplinary or licensure hearing; failure to cooperate with any lawful request or investigation by the board; or failure to comply with a lawfully issued subpoena of the board.

(p) Willful, obstinate and continuing refusal to cooperate with the board in observing its rules and regulations in promptly paying all legal license or other fees required by law.

(q) Practicing dentistry or dental hygiene while the person's license is suspended.

(r) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) In lieu of revocation of a license as provided for above, the board may suspend the license of the offending dentist or dental hygienist, suspend the sedation permit of the offending dentist, or take any other action in relation to his or her license as the board may deem proper under the circumstances.

(3) When a license to practice dentistry or dental hygiene is revoked or suspended by the board, the board may, in its discretion, stay the revocation or suspension and simultaneously place the licensee on probation upon the condition that the licensee shall not violate the laws of the State of Mississippi pertaining to the practice of dentistry or dental hygiene and shall not violate the rules and regulations of the board and shall not violate any terms in relation to his or her license as may be set by the board.



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(4) In a proceeding conducted under this section by the board for the denial, revocation or suspension of a license to practice dentistry or dental hygiene, the board shall have the power and authority for the grounds stated for that denial, revocation or suspension, and in addition thereto or in lieu of that denial, revocation or suspension may assess and levy upon any person licensed to practice dentistry or dental hygiene in the State of Mississippi, a monetary penalty, as follows:

(a) For the first violation of any of subparagraph (a), (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00).

(b) For the second violation of any of subparagraph (a), (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).

(c) For the third and any subsequent violation of any of subparagraph (a), (b), (c), (d), (f), (i), (l), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than Five Hundred Dollars (\$500.00) and not more than Five Thousand Dollars (\$5,000.00).

(d) For any violation of any of subparagraphs (a) through (q) of subsection (1) of this section, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation or suspension, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

(5) The power and authority of the board to assess and levy monetary penalties under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

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(6) A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section under the same conditions as a right of appeal is provided elsewhere for appeals from an adverse ruling, order or decision of the board.

(7) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal has expired. In the event of an appeal, the appeal shall act as a supersedeas.

(8) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the expiration of the period allowed for appeal of those penalties under this section or may be paid sooner if the licensee elects. With the exception of subsection (4)(d) of this section, monetary penalties collected by the board under this section shall be deposited to the credit of the General Fund of the State Treasury. Any monies collected by the board under subsection (4)(d) of this section shall be deposited into the special fund operating account of the board.

(9) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, and if the licensee is a nonresident of the State of Mississippi, the proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(10) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order

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for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(11) All grounds for disciplinary action, including imposition of fines and assessment of costs as enumerated above, shall also apply to any other license or permit issued by the board under this chapter or regulations duly adopted by the board.

**SECTION 8.** Section 73-21-97, Mississippi Code of 1972, is amended as follows:

73-21-97. (1) The board may refuse to issue or renew, or may suspend, reprimand, revoke or restrict the license, registration or permit of any person upon one or more of the following grounds:

(a) Unprofessional conduct as defined by the rules and regulations of the board;

(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, confidence and safety to the public;

(c) Being found guilty by a court of competent jurisdiction of one or more of the following:

(i) A felony;

(ii) Any act involving moral turpitude or gross immorality; or

(iii) Violation of pharmacy or drug laws of this state or rules or regulations pertaining thereto, or of statutes, rules or regulations of any other state or the federal government;

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(d) Fraud or intentional misrepresentation by a licensee or permit holder in securing the issuance or renewal of a license or permit;

(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license;

(f) Violation of any of the provisions of this chapter or rules or regulations adopted pursuant to this chapter;

(g) Failure to comply with lawful orders of the board;

(h) Negligently or willfully acting in a manner inconsistent with the health or safety of the public;

(i) Addiction to or dependence on alcohol or controlled substances or the unauthorized use or possession of controlled substances;

(j) Misappropriation of any prescription drug;

(k) Being found guilty by the licensing agency in another state of violating the statutes, rules or regulations of that jurisdiction;

(l) The unlawful or unauthorized possession of a controlled substance;

(m) Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as required by the Prescription Monitoring Program under Section 73-21-127; \* \* \*

(n) Failure to obtain the license, registration or permit required by this chapter; or

(o) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) In lieu of suspension, revocation or restriction of a license as provided for above, the board may warn or reprimand the offending pharmacist.



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(3) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license, registration or permit of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license, registration or permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 9.** Section 73-25-29, Mississippi Code of 1972, is amended as follows:

73-25-29. The grounds for the nonissuance, suspension, revocation or restriction of a license or the denial of reinstatement or renewal of a license are:

(1) Habitual personal use of narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability.

(2) Habitual use of intoxicating liquors, or any beverage, to an extent which affects professional competency.

(3) Administering, dispensing or prescribing any narcotic drug, or any other drug having addiction-forming or addiction-sustaining liability otherwise than in the course of legitimate professional practice.

(4) Conviction of violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law, a certified copy of the conviction order or judgment



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rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(5) Procuring, or attempting to procure, or aiding in, an abortion that is not medically indicated.

(6) Conviction of a felony or misdemeanor involving moral turpitude, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(7) Obtaining or attempting to obtain a license by fraud or deception.

(8) Unprofessional conduct, which includes, but is not limited to:

(a) Practicing medicine under a false or assumed name or impersonating another practitioner, living or dead.

(b) Knowingly performing any act which in any way assists an unlicensed person to practice medicine.

(c) Making or willfully causing to be made any flamboyant claims concerning the licensee's professional excellence.

(d) Being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.

(e) Obtaining a fee as personal compensation or gain from a person on fraudulent representation of a disease or injury condition generally considered incurable by competent medical authority in the light of current scientific knowledge and practice can be cured or offering, undertaking, attempting or agreeing to cure or treat the same by a secret method, which he refuses to divulge to the board upon request.

(f) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the licensing requirements, including the signing in his professional

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capacity any certificate that is known to be false at the time he makes or signs such certificate.

(g) Failing to identify a physician's school of practice in all professional uses of his name by use of his earned degree or a description of his school of practice.

(9) The refusal of a licensing authority of another state or jurisdiction to issue or renew a license, permit or certificate to practice medicine in that jurisdiction or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by such licensing authority which prevents or restricts practice in that jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(10) Surrender of a license or authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this section.

(11) Final sanctions imposed by the United States Department of Health and Human Services, Office of Inspector General or any successor federal agency or office, based upon a finding of incompetency, gross misconduct or failure to meet professionally recognized standards of health care; a certified copy of the notice of final sanction being prima facie evidence thereof. As used in this paragraph, the term "final sanction" means the written notice to a physician from the United States Department of Health and Human Services, Officer of Inspector General or any successor federal agency or office, which implements the exclusion.

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(12) Failure to furnish the board, its investigators or representatives information legally requested by the board.

(13) Violation of any provision(s) of the Medical Practice Act or the rules and regulations of the board or of any order, stipulation or agreement with the board.

(14) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

In addition to the grounds specified above, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 10.** Section 73-26-5, Mississippi Code of 1972, is amended as follows:

73-26-5. (1) The board shall promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of physician assistants. Those rules shall include, but are not limited to: qualifications for licensure for physician assistants; scope of practice of physician assistants; supervision of physician assistants; identification of physician assistants; grounds for disciplinary actions and discipline of physician assistants, which through June 30, 2016,

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shall specifically include discipline for violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners; and setting and charging reasonable fees for licensure and license renewals for physician assistants. However, nothing in this chapter or in rules adopted by the board shall authorize physician assistants to administer or monitor general inhaled anesthesia, epidural anesthesia, spinal anesthesia or monitored anesthesia as utilized in surgical procedures. The board shall promulgate rules for licensure and license renewals in accordance with Section 33-1-39.

(2) If the board appoints a task force or committee to address physician assistant regulation, at least one (1) member of the task force shall be a nurse practitioner who is a member of the Mississippi Board of Nursing or a nurse practitioner appointee selected by the board from a list of three (3) recommendations submitted by the Mississippi Nurses Association, and at least one (1) member shall be a physician assistant selected by the board from a list of three (3) recommendations submitted by the Mississippi Academy of Physician Assistants.

**SECTION 11.** Section 73-27-13, Mississippi Code of 1972, is amended as follows:

73-27-13. (1) The State Board of Medical Licensure may refuse to issue, suspend, revoke or otherwise restrict any license provided for in this chapter, with the advice of the advisory committee, based upon the following grounds:

(a) Habitual personal use of narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability.

(b) Habitual use of intoxicating liquors, or any beverage, to an extent which affects professional competency.

(c) Administering, dispensing or prescribing any narcotic drug, or any other drug having addiction-forming or



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addiction-sustaining liability otherwise than in the course of legitimate professional practice.

(d) Conviction of violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law.

(e) Performing any medical diagnosis or treatment outside the scope of podiatry as defined in Section 73-27-1.

(f) Conviction of a felony or misdemeanor involving moral turpitude.

(g) Obtaining or attempting to obtain a license by fraud or deception.

(h) Unprofessional conduct, which includes, but is not limited to:

(i) Practicing medicine under a false or assumed name or impersonating another practitioner, living or dead.

(ii) Knowingly performing any act which in any way assists an unlicensed person to practice podiatry.

(iii) Making or willfully causing to be made any flamboyant claims concerning the licensee's professional excellence.

(iv) Being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.

(v) Obtaining a fee as personal compensation or gain from a person on fraudulent representation a disease or injury condition generally considered incurable by competent medical authority in the light of current scientific knowledge and practice can be cured or offering, undertaking, attempting or agreeing to cure or treat the same by a secret method, which he refuses to divulge to the board upon request.

(vi) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the



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licensing requirements, including the signing in his professional capacity any certificate that is known to be false at the time he makes or signs such certificate.

(vii) Failing to identify a podiatrist's school of practice in all professional uses of his name by use of his earned degree or a description of his school of practice.

(i) The refusal of a licensing authority of another state to issue or renew a license, permit or certificate to practice podiatry in that state or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by such licensing authority which prevents or restricts practice in that state.

(j) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) Upon the nonissuance, suspension or revocation of a license to practice podiatry, the board may, in its discretion and with the advice of the advisory committee, reissue a license after a lapse of six (6) months. No advertising shall be permitted except regular professional cards.

(3) In its investigation of whether the license of a podiatrist should be suspended, revoked or otherwise restricted, the board may inspect patient records in accordance with the provisions of Section 73-25-28.

(4) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended

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for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 12.** Section 73-15-29, Mississippi Code of 1972, is amended as follows:

73-15-29. (1) The board shall have power to revoke, suspend or refuse to renew any license issued by the board, or to revoke or suspend any privilege to practice, or to deny an application for a license, or to fine, place on probation and/or discipline a licensee, in any manner specified in this article, upon proof that such person:

(a) Has committed fraud or deceit in securing or attempting to secure such license;

(b) Has been convicted of felony, or a crime involving moral turpitude or has had accepted by a court a plea of nolo contendere to a felony or a crime involving moral turpitude (a certified copy of the judgment of the court of competent jurisdiction of such conviction or pleas shall be prima facie evidence of such conviction);

(c) Has negligently or willfully acted in a manner inconsistent with the health or safety of the persons under the licensee's care;

(d) Has had a license or privilege to practice as a registered nurse or a licensed practical nurse suspended or revoked in any jurisdiction, has voluntarily surrendered such license or privilege to practice in any jurisdiction, has been placed on probation as a registered nurse or licensed practical nurse in any jurisdiction or has been placed under a disciplinary order(s) in any manner as a registered nurse or licensed practical nurse in any jurisdiction, (a certified copy of the order of

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suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(e) Has negligently or willfully practiced nursing in a manner that fails to meet generally accepted standards of such nursing practice;

(f) Has negligently or willfully violated any order, rule or regulation of the board pertaining to nursing practice or licensure;

(g) Has falsified or in a repeatedly negligent manner made incorrect entries or failed to make essential entries on records;

(h) Is addicted to or dependent on alcohol or other habit-forming drugs or is a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effect, or has misappropriated any medication;

(i) Has a physical, mental or emotional condition that renders the licensee unable to perform nursing services or duties with reasonable skill and safety;

(j) Has engaged in any other conduct, whether of the same or of a different character from that specified in this article, that would constitute a crime as defined in Title 97 of the Mississippi Code of 1972, as now or hereafter amended, and that relates to such person's employment as a registered nurse or licensed practical nurse;

(k) Engages in conduct likely to deceive, defraud or harm the public;

(l) Engages in any unprofessional conduct as identified by the board in its rules; \* \* \*

(m) Has violated any provision of this article; or

(n) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

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(2) When the board finds any person unqualified because of any of the grounds set forth in subsection (1) of this section, it may enter an order imposing one or more of the following penalties:

(a) Denying application for a license or other authorization to practice nursing or practical nursing;

(b) Administering a reprimand;

(c) Suspending or restricting the license or other authorization to practice as a registered nurse or licensed practical nurse for up to two (2) years without review;

(d) Revoking the license or other authorization to practice nursing or practical nursing;

(e) Requiring the disciplinee to submit to care, counseling or treatment by persons and/or agencies approved or designated by the board as a condition for initial, continued or renewed licensure or other authorization to practice nursing or practical nursing;

(f) Requiring the disciplinee to participate in a program of education prescribed by the board as a condition for initial, continued or renewed licensure or other authorization to practice;

(g) Requiring the disciplinee to practice under the supervision of a registered nurse for a specified period of time; or

(h) Imposing a fine not to exceed Five Hundred Dollars (\$500.00).

(3) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license or privilege to practice of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or privilege to practice for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license

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or privilege to practice suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or privilege to practice suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(4) If the public health, safety or welfare imperatively requires emergency action and the board incorporates a finding to that effect in an order, the board may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined by the board.

**SECTION 13.** Section 73-19-23, Mississippi Code of 1972, is amended as follows:

73-19-23. (1) The board shall refuse to grant a certificate of licensure to any applicant and may cancel, revoke or suspend the operation of any certificate by it granted for any or all of the following reasons: unprofessional and unethical conduct or the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, or stimulants, narcotics, or any other substance that impairs the intellect and judgment to such an extent as to incapacitate one for the performance of the duties of an optometrist. The certificate of licensure of any person can be revoked for violating any section of this chapter.

(2) The board shall further be authorized to take disciplinary action against a licensee for any unlawful acts, which shall include violations of regulations promulgated by the board, as well as the following acts:



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(a) Fraud or misrepresentation in applying for or procuring an optometric license or in connection with applying for or procuring periodic renewal of an optometric license.

(b) Cheating on or attempting to subvert the optometric licensing examination(s).

(c) The conviction of a felony in this state or any other jurisdiction, or the entry of a guilty or nolo contendere plea to a felony charge.

(d) The conviction of a felony as defined by federal law, or the entry of a guilty or nolo contendere plea to a felony charge.

(e) Conduct likely to deceive, defraud or harm the public.

(f) Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, device, treatment or remedy prescribed by him or her or used at his or her direction in the treatment of any disease or other condition.

(g) Willfully or negligently violating the confidentiality between doctor and patient, except as required by law.

(h) Negligence or gross incompetence in the practice of optometry as determined by the board.

(i) Being found to be a person with mental illness or with an intellectual disability by any court of competent jurisdiction.

(j) The use of any false, fraudulent, deceptive or misleading statement in any document connected with the practice of optometry.

(k) Aiding or abetting the practice of optometry by an unlicensed, incompetent or impaired person.

(l) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's practice of optometry.

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(m) Being addicted or habituated to a drug or intoxicant.

(n) Violating any state or federal law or regulation relating to a drug legally classified as a controlled substance.

(o) Obtaining any fee by fraud, deceit or misrepresentation.

(p) Disciplinary action of another state or jurisdiction against a licensee or other authorization to practice optometry based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this chapter, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof.

(q) Failure to report to the board the relocation of his or her office in or out of the jurisdiction, or to furnish floor plans as required by regulation.

(r) Violation of any provision(s) of the Optometry Practice Act or the rules and regulations of the board or of an action, stipulation or agreement of the board.

(s) To advertise in a manner that tends to deceive, mislead or defraud the public.

(t) The designation of any person licensed under this chapter, other than by the terms "optometrist," "Doctor of Optometry" or "O.D.," which through June 30, 2016, shall include any violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners.

(u) To knowingly submit or cause to be submitted any misleading, deceptive or fraudulent representation on a claim form, bill or statement.

(v) To practice or attempt to practice optometry while his or her license is suspended.

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(3) Any person who is holder of a certificate of licensure or who is an applicant for examination for a certificate of licensure, against whom is preferred any charges, shall be furnished by the board with a copy of the complaint and shall have a hearing in Jackson, Mississippi, before the board, at which hearing he may be represented by counsel. At the hearing, witnesses may be examined for and against the accused respecting those charges, and the hearing orders or appeals will be conducted according to the procedure now provided in Section 73-25-27. The suspension of a certificate of licensure by reason of the use of stimulants or narcotics may be removed when the holder of the certificate has been adjudged by the board to be cured and capable of practicing optometry.

(4) In addition to the reasons specified in subsections (1) and (2) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 14.** Section 73-6-19, Mississippi Code of 1972, is amended as follows:

73-6-19. (1) The board shall refuse to grant a certificate of licensure to any applicant or may cancel, revoke or suspend the certificate upon the finding of any of the following facts regarding the applicant or licensed practitioner:

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(a) Failure to comply with the rules and regulations adopted by the State Board of Chiropractic Examiners;

(b) Violation of any of the provisions of this chapter or any of the rules and regulations of the State Board of Health pursuant to this chapter with regard to the operation and use of x-rays;

(c) Fraud or deceit in obtaining a license;

(d) Addiction to the use of alcohol, narcotic drugs, or anything which would seriously interfere with the competent performance of his professional duties;

(e) Conviction by a court of competent jurisdiction of a felony, other than manslaughter or any violation of the United States Internal Revenue Code;

(f) Unprofessional and unethical conduct;

(g) Contraction of a contagious disease which may be carried for a prolonged period;

(h) Failure to report to the Mississippi Department of Human Services or the county attorney any case wherein there are reasonable grounds to believe that a child or vulnerable adult has been abused by its parent or person responsible for such person's welfare;

(i) Advising a patient to use drugs, prescribing or providing drugs for a patient, or advising a patient not to use a drug prescribed by a licensed physician or dentist;

(j) Professional incompetency in the practice of chiropractic;

(k) Having disciplinary action taken by his peers within any professional chiropractic association or society;

(l) Offering to accept or accepting payment for services rendered by assignment from any third-party payor after offering to accept or accepting whatever the third-party payor covers as payment in full, if the effect of the offering or acceptance is to eliminate or give the impression of eliminating

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the need for payment by an insured of any required deductions applicable in the policy of the insured;

(m) Associating his practice with any chiropractor who does not hold a valid chiropractic license in Mississippi, or teach chiropractic manipulation to nonqualified persons under Section 73-6-13;

(n) Failure to make payment on chiropractic student loans;

(o) Failure to follow record keeping requirements prescribed in Section 73-6-18; \* \* \*

(p) If the practitioner is certified to provide animal chiropractic treatment, failure to follow guidelines approved by the Mississippi Board of Veterinary Medicine; or

(q) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) Any holder of such certificate or any applicant therefor against whom is preferred any of the designated charges shall be furnished a copy of the complaint and shall receive a formal hearing in Jackson, Mississippi, before the board, at which time he may be represented by counsel and examine witnesses. The board is authorized to administer oaths as may be necessary for the proper conduct of any such hearing. In addition, the board is authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the board shall extend to all parts of the state. Where in any proceeding before the board any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of



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competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(3) In addition to any other investigators the board employs, the board shall appoint one or more licensed chiropractors to act for the board in investigating the conduct relating to the competency of a chiropractor, whenever disciplinary action is being considered for professional incompetence and unprofessional conduct.

(4) Whenever the board finds any person unqualified to practice chiropractic because of any of the grounds set forth in subsection (1) of this section, after a hearing has been conducted as prescribed by this section, the board may enter an order imposing one or more of the following:

- (a) Deny his application for a license or other authorization to practice chiropractic;
- (b) Administer a public or private reprimand;
- (c) Suspend, limit or restrict his license or other authorization to practice chiropractic for up to five (5) years;
- (d) Revoke or cancel his license or other authorization to practice chiropractic;
- (e) Require him to submit to care, counseling or treatment by physicians or chiropractors designated by the board, as a condition for initial, continued or renewal of licensure or other authorization to practice chiropractic;
- (f) Require him to participate in a program of education prescribed by the board; or
- (g) Require him to practice under the direction of a chiropractor designated by the board for a specified period of time.

(5) Any person whose application for a license or whose license to practice chiropractic has been cancelled, revoked or suspended by the board within thirty (30) days from the date of

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such final decision shall have the right of a de novo appeal to the circuit court of his county of residence or the Circuit Court of the First Judicial District of Hinds County, Mississippi. If there is an appeal, such appeal may, in the discretion of and on motion to the circuit court, act as a supersedeas. The circuit court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the circuit judge, be tried in vacation. Either party shall have the right of appeal to the Supreme Court as provided by law from any decision of the circuit court.

(6) In a proceeding conducted under this section by the board for the revocation, suspension or cancellation of a license to practice chiropractic, after a hearing has been conducted as prescribed by this section, the board shall have the power and authority for the grounds stated in subsection (1) of this section, with the exception of paragraph (c) thereof, to assess and levy upon any person licensed to practice chiropractic in the state a monetary penalty in lieu of such revocation, suspension or cancellation, as follows:

(a) For the first violation, a monetary penalty of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for each violation.

(b) For the second and each subsequent violation, a monetary penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) for each violation.

The power and authority of the board to assess and levy such monetary penalties under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations. A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section to the circuit court under the same conditions as a right of appeal is provided for in this section

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for appeals from an adverse ruling, or order, or decision of the board. Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal has expired, and an appeal of the assessment and levy of such a monetary penalty shall act as a supersedeas.

(7) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 15.** Section 73-39-77, Mississippi Code of 1972, is amended as follows:

73-39-77. (1) Upon a written complaint sworn to by any person, the board, in its sole discretion, may, after a hearing, revoke, suspend or limit for a certain time a license, impose an administrative fine not to exceed One Thousand Dollars (\$1,000.00) for each separate offense, or otherwise discipline any licensed veterinarian for any of the following reasons:

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(a) The employment of fraud, misrepresentation or deception in obtaining a license.

(b) The inability to practice veterinary medicine with reasonable skill and safety because of a physical or mental disability, including deterioration of mental capacity, loss of motor skills or abuse of drugs or alcohol of sufficient degree to diminish the person's ability to deliver competent patient care.

(c) The use of advertising or solicitation that is false or misleading.

(d) Conviction of the following in any federal court or in the courts of this state or any other jurisdiction, regardless of whether the sentence is deferred:

(i) Any felony;

(ii) Any crime involving cruelty, abuse or neglect of animals, including bestiality;

(iii) Any crime of moral turpitude;

(iv) Any crime involving unlawful sexual contact, child abuse, the use or threatened use of a weapon, the infliction of injury, indecent exposure, perjury, false reporting, criminal impersonation, forgery and any other crime involving a lack of truthfulness, veracity or honesty, intimidation of a victim or witness, larceny, or alcohol or drugs.

For the purposes of this paragraph, a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.

(e) Incompetence, gross negligence or other malpractice in the practice of veterinary medicine.

(f) Aiding the unlawful practice of veterinary medicine.

(g) Fraud or dishonesty in the application or reporting of any test for disease in animals.

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(h) Failure to report, as required by law, or making false or misleading report of, any contagious or infectious disease.

(i) Failure to keep accurate patient records.

(j) Dishonesty or gross negligence in the performance of food safety inspections or in the issuance of any health or inspection certificates.

(k) Failure to keep veterinary premises and equipment, including practice vehicles, in a clean and sanitary condition.

(l) Failure to permit the board or its agents to enter and inspect veterinary premises and equipment, including practice vehicles, as set by rules promulgated by the board.

(m) Revocation, suspension or limitation of a license to practice veterinary medicine by another state, territory or district of the United States.

(n) Loss or suspension of accreditation by any federal or state agency.

(o) Unprofessional conduct as defined in regulations adopted by the board.

(p) The dispensing, distribution, prescription or administration of any veterinary prescription drug, or the extralabel use of any drug in the absence of a veterinarian-client-patient relationship.

(q) Violations of state or federal drug laws.

(r) Violations of any order of the board.

(s) Violations of this chapter or of the rules promulgated under this chapter.

(t) Violation(s) of the provisions of Sections 1 through 5 of this act relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2016.

(2) A certified copy of any judgment of conviction or finding of guilt by a court of competent jurisdiction or by a



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governmental agency, or agency authorized to issue licenses or permits, including the United States Department of Agriculture, Animal and Plant Health Inspection Service, the Mississippi Board of Animal Health and the Mississippi Board of Health, of a veterinarian or veterinary technician of any matters listed in this section shall be admissible in evidence in any hearing held by the board to discipline such veterinarian or technician and shall constitute prima facie evidence of the commission of any such act.

**SECTION 16.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2772

**Description:** Election law task force; create.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Elections;Rules
- 2 02/29 (S) DR - TSDPAA: EL To RU
- 3 03/06 (S) Title Suff Do Pass As Amended
- 4 03/13 (S) Amended
- 5 03/13 (S) Passed As Amended *{Vote}*
- 6 03/15 (S) Transmitted To House
- 7 03/19 (H) Referred To Apportionment and Elections
- 8 03/29 (H) Title Suff Do Pass
- 9 04/05 (H) Passed *{Vote}*
- 10 04/05 (H) Motion to Reconsider Entered (Brown (66th), Denny, Horne)
- 11 04/12 (H) Motion to Reconsider Tabled
- 12 04/12 (H) Transmitted To Senate
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/17 (H) Enrolled Bill Signed
- 15 04/23 Approved by Governor

**Amendments:**

 [S] Committee Amendment No 1 *Adopted* Voice Vote

----- Additional Information -----

*Senate Committee:* Elections, Rules

*House Committee:* Apportionment and Elections

*Principal Author:* McDaniel

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2772

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) McDaniel

To: Elections; Rules

### SENATE BILL NO. 2772 (As Passed the Senate)

AN ACT TO CREATE AND EMPOWER A SPECIAL TASK FORCE TO STUDY THE STATUS OF MISSISSIPPI'S ELECTION PROCESS TO CONSIDER ALL MATTERS RELATING TO ELECTIONS IN MISSISSIPPI AND MAKE RECOMMENDATIONS THEREON; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) There is hereby created a task force to study Mississippi's election laws, to consider all matters relating to elections in Mississippi and to make recommendations to revise Mississippi's election laws. The task force may conduct public hearings and receive information from any source deemed appropriate. The task force shall be composed of the following members:

- (a) The Chairman of the Senate Elections Committee;
- (b) The Chairman of the House Apportionment and Elections Committee;
- (c) Three (3) members appointed by the Lieutenant Governor;
- (d) Three (3) members appointed by the Speaker of the House of Representatives;
- (e) The Assistant Secretary of State for the Elections Division;
- (f) One (1) Assistant Attorney General appointed by the Attorney General;
- (g) One (1) member appointed by the Mississippi Circuit Clerk's Association; and
- (h) One (1) member appointed by the Election Commissioners Association of Mississippi.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2772

Appointments shall be made within thirty (30) days after the effective date of this act.

(2) The Lieutenant Governor and Speaker of the House shall appoint co-chairmen of the task force and call the first meeting. The task force may elect from its membership such other officers as it may consider necessary. A majority of the members of the task force shall constitute a quorum. All members shall be notified in writing of all meetings at least five (5) days prior to the date on which a meeting is to be held.

(3) Members of the task force who are not legislators, state officials or state employees shall be reimbursed in accordance with Section 25-3-41, Mississippi Code of 1972, for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force shall receive the compensation authorized for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the task force will be paid to legislators while the Legislature is in session. Members of the task force who are state officials or state employees shall be reimbursed by their department or agency for mileage and actual expenses incurred in the performance of their duties in accordance with Section 25-3-41, Mississippi Code of 1972. No task force member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the task force, which action shall be recorded in the official minutes of the meeting.

(4) The task force shall utilize clerical and legal staff of the Legislature, the Secretary of State and the Attorney General. To effectuate the purposes of the task force, any department, board or agency of the state or local government shall, at the request of the co-chairmen of the task force, provide to the task force such facilities, assistance and data as will enable the task force to properly carry out its powers and duties.

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(5) The task force shall present its findings to the Legislature on or before June 30, 2013, by filing its report thereon with the Secretary of the Senate. Its report may propose legislation related to the matters within the jurisdiction of the task force. The task force shall be dissolved on January 1, 2014.

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2802

**Description:** Uniform traffic ticket law; revise to allow electronic filing for DUI tickets.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Judiciary, Division B
- 2 03/06 (S) Title Suff Do Pass
- 3 03/08 (S) Passed {Vote}
- 4 03/08 (S) Immediate Release
- 5 03/08 (S) Transmitted To House
- 6 03/13 (H) Referred To Judiciary B
- 7 03/29 (H) Title Suff Do Pass
- 8 04/05 (H) Tabled Subject To Call
- 9 04/11 (H) Passed {Vote}
- 10 04/12 (H) Transmitted To Senate
- 11 04/17 (S) Enrolled Bill Signed
- 12 04/17 (H) Enrolled Bill Signed
- 13 04/23 Approved by Governor

**Code Section:** A 063-0009-0021

----- Additional Information -----

**Senate Committee:** Judiciary, Division B

**House Committee:** Judiciary B

**Principal Author:** McDaniel

**Additional Authors:** Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2802

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) McDaniel, Jackson (11th)

To: Judiciary, Division B

### SENATE BILL NO. 2802

AN ACT TO AMEND SECTION 63-9-21, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC FILING FOR CITATIONS ISSUED FOR VIOLATIONS OF THE MISSISSIPPI IMPLIED CONSENT LAW; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 63-9-21, Mississippi Code of 1972, is amended as follows:

63-9-21. (1) This section shall be known as the Uniform Traffic Ticket Law.

(2) All traffic tickets, except traffic tickets filed electronically as provided under subsection (8) of this section, shall be printed in the original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety. All traffic tickets shall be uniform as prescribed by the Commissioner of Public Safety and the Attorney General, except as otherwise provided in subsection (3)(b) and except that the Commissioner of Public Safety and the Attorney General may alter the form and content of traffic tickets to meet the varying requirements of the different law enforcement agencies. The Commissioner of Public Safety and the Attorney General shall prescribe a separate traffic ticket, consistent with the provisions of subsection (3)(b) of this section, to be used exclusively for violations of the Mississippi Implied Consent Law.

(3) (a) \* \* \* Every traffic ticket issued by any sheriff, deputy sheriff, constable, county patrol officer, municipal police officer or State Highway Patrol officer for any violation of traffic or motor vehicle laws shall be issued on the uniform traffic ticket or uniform implied consent law violation ticket

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consisting of an original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety.

(b) The traffic ticket, citation or affidavit issued to a person arrested for a violation of the Mississippi Implied Consent Law \* \* \* shall contain a place for the trial judge hearing the case or accepting the guilty plea, as the case may be, to sign, stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised of his right to have an attorney. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be entered or written on the ticket, citation or affidavit.

(c) Every traffic ticket shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard, and the date and time the person is to appear to answer the charge. The ticket shall include information that will constitute a complaint charging the offense for which the ticket was issued, and when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed thereunder.

(d) The traffic ticket shall contain a space to include the current address and current telephone number of the person being charged. It shall not contain a space to include the social security number of the person being charged \* \* \*.

(4) All traffic tickets, except traffic tickets filed electronically under subsection (8) of this section, shall be bound in book form, shall be consecutively numbered and each traffic ticket shall be accounted for to the officer issuing such book. The traffic ticket books shall be issued to sheriffs, deputy sheriffs, constables and county patrol officers by the chancery clerk of their respective counties, to each municipal

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police officer by the clerk of the municipal court, and to each State Highway Patrol officer by the Commissioner of Public Safety.

(5) The chancery clerk, clerk of the municipal court and the Commissioner of Public Safety shall keep a record of all traffic ticket books issued and to whom issued, accounting for all books printed and issued.

(6) The original traffic ticket, unless the traffic ticket is filed electronically as provided under subsection (8) of this section, shall be delivered by the officer issuing the traffic ticket to the clerk of the court to which it is returnable to be retained in that court's records and the number noted on the docket. However, if a ticket is issued and the person is incarcerated based upon the conduct for which the ticket was issued, the ticket shall be filed with the clerk of the court to which it is returnable no later than 5:00 p.m. on the next business day, excluding weekends and holidays, after the date and time of the person's incarceration. The officer issuing the traffic ticket shall also give the accused a copy of the traffic ticket. The clerk of the court shall file a copy with the Commissioner of Public Safety within forty-five (45) days after judgment is rendered showing such information about the judgment as may be required by the commissioner or, in cases in which no judgment has been rendered, within one hundred twenty (120) days after issuance of the ticket. Other copies that are prescribed by the commissioner pursuant to this section shall be filed or retained as may be designated by the commissioner. All copies shall be retained for at least two (2) years.

(7) Failure to comply with the provisions of this section shall constitute a misdemeanor and, upon conviction, shall be punishable by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

(8) (a) Law enforcement officers and agencies may file traffic tickets by computer or electronic means if the ticket

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conforms in all substantive respects, including layout and content, as provided under subsection (2) of this section. The provisions of subsection (4) of this section requiring tickets bound in book form do not apply to a ticket that is produced by computer or electronic means. Information concerning tickets produced by computer or electronic means shall be available for public inspection in substantially the same manner as provided for the uniform tickets described in subsection (2) of this section.

(b) The defendant shall be provided with a paper copy of the ticket. A law enforcement officer who files a ticket electronically shall be considered to have certified the ticket and has the same rights, responsibilities and liabilities as with all other tickets issued pursuant to this section.

\* \* \*

**SECTION 2.** This act shall take effect and be in force from and after July 1, 2012.



Mississippi Legislature  
2012 Regular Session

Senate Bill 2814

**Description:** Pearl River Valley Water Supply District Reservoir Police; authorize to participate in multijurisdictional operations.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Environment Prot, Cons and Water Res
- 2 03/01 (S) Title Suff Do Pass
- 3 03/13 (S) Passed {Vote}
- 4 03/14 (S) Transmitted To House
- 5 03/19 (H) Referred To Conservation and Water Resources;Judiciary B
- 6 03/22 (H) DR - TSDP: CR To JB
- 7 03/29 (H) DR - TSDP: JB To CR
- 8 03/29 (H) Title Suff Do Pass
- 9 04/05 (H) Amended
- 10 04/05 (H) Passed As Amended {Vote}
- 11 04/09 (H) Returned For Concurrence
- 12 04/12 (S) Concurred in Amend From House {Vote}
- 13 04/17 (S) Enrolled Bill Signed
- 14 04/18 (H) Enrolled Bill Signed
- 15 04/24 Approved by Governor

**Amendments:**

 |  [H] Amendment No 1 **Adopted** Voice Vote

 |  Amendment Report for Senate Bill No. 2814

**Code Section:** A 051-0009-0176, A 051-0009-0171, A 051-0009-0175, A 051-0009-0177, A 051-0009-0179, A 051-0009-0181, A 051-0009-0183

----- Additional Information -----

*Senate Committee:* Environment Prot, Cons and Water Res

*House Committee:* Conservation and Water Resources, Judiciary B

*Principal Author:* Harkins

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2814

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Harkins

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2814  
(As Sent to Governor)

AN ACT TO AMEND SECTION 51-9-176, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE PEARL RIVER VALLEY WATER DISTRICT RESERVOIR POLICE TO PARTICIPATE IN MULTI JURISDICTIONAL TRAINING, LAW ENFORCEMENT AND EMERGENCY OPERATIONS; TO CHANGE THE NAME OF THE PEARL RIVER VALLEY WATER SUPPLY DISTRICT RESERVOIR PATROL TO PEARL RIVER VALLEY WATER SUPPLY DISTRICT RESERVOIR POLICE; TO AMEND SECTIONS 51-9-171, 51-9-175, 51-9-177, 51-9-179, 51-9-181 AND 51-9-183, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 51-9-176, Mississippi Code of 1972, is amended as follows:

51-9-176. At the request of a Mississippi municipality, county, other legal political subdivision of the state or a Mississippi state agency, federal agency, or under a declaration of a state of emergency or disaster by the Governor or the President of the United States, the officers of the Pearl River Valley Water Supply District Reservoir Police may render law enforcement services including search and rescue using Pearl River Valley Water Supply District Reservoir Police equipment. Officers of the Pearl River Valley Water Supply District Reservoir Police may also participate in joint multijurisdictional training exercises, multijurisdictional law enforcement operations and multijurisdictional search and rescue operations. The officers may exercise the law enforcement authority granted under Section 51-9-175 in the jurisdiction of the training, operation or emergency. The Pearl River Valley Water Supply District Reservoir Police, with the approval of the governing board, may enter into agreements with jurisdictions regarding the circumstances in which emergency assistance may be provided and administered. Unless

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2814

otherwise directed by an agreement, officers will remain under the authority of the Pearl River Valley Water Supply District Reservoir Police Chief or to whomever and to what level of authority is delegated by the Pearl River Valley Water Supply District Reservoir Police Chief or by assignment through the National Incident Management System or by the stated declaration of disaster or emergency. The Pearl River Valley Water Supply District Reservoir Police may seek reimbursement for services and related expenses if available.

**SECTION 2.** Section 51-9-171, Mississippi Code of 1972, is amended as follows:

51-9-171. This article shall be cited as "The Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978."

**SECTION 3.** Section 51-9-175, Mississippi Code of 1972, is amended as follows:

51-9-175. (1) The board of directors of the district may appoint and commission qualified persons as reservoir police officers of the district. Any such reservoir police officer so appointed shall be certified by the Board on Law Enforcement Officer Standards and Training or in accordance with the Board on Law Enforcement Officer Standards and Training and shall attain certification or recertification within one (1) year of appointment, and shall at all times be answerable and responsible to the board of directors of the district.

(2) A reservoir police officer appointed and commissioned as provided in subsection (1) of this section shall, before entering upon his duties as such officer, take the oath of office prescribed by Section 268, Mississippi Constitution of 1890, which shall be endorsed upon his commission. The commission, with the oath endorsed upon it, shall be entered in the official minute book of the district.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2814

(3) A reservoir police officer appointed and commissioned pursuant to the provisions of this article, shall, while engaged in the performance of his duties, carry on his person a badge identifying him as a reservoir police officer of the district and an identification card issued by the district. When in uniform, each such reservoir police officer shall wear his badge in plain view.

(4) A reservoir police officer may exercise the same powers of arrest and the right to bear firearms that may be exercised by any state, municipal or other police officer in this state, but only with respect to violations of law or violations of regulations adopted pursuant to Section 51-9-127, which are committed on the property owned by the district. This includes property which is owned by the district but has been leased or rented to other parties. Any right granted under this subsection in no way relieves the requirements of appropriate affidavit and warrant for arrest from the appropriate jurisdiction and authority pursuant to the laws of this state.

(5) On behalf of each person who is trained as a reservoir police officer at the Mississippi Law Enforcement Officers' Training Academy, the district shall be required to pay to the academy at least an amount equal to the per student cost of operation of the academy as tuition.

**SECTION 4.** Section 51-9-177, Mississippi Code of 1972, is amended as follows:

51-9-177. A person arrested by a reservoir police officer shall be handled or processed in the jurisdiction in which the offense was committed, in the same manner as if the arrest had been made by a sheriff or constable. If the reservoir police officer detains any person arrested by him, he shall forthwith deliver the arrested person to the sheriff of the county in which the offense was committed, and the reservoir police officer shall



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2814

have no further authority as to the custody of such arrested person.

**SECTION 5.** Section 51-9-179, Mississippi Code of 1972, is amended as follows:

51-9-179. The district, by the act of the appointment of any \* \* \* reservoir police officer, shall be liable and responsible for all acts of such reservoir police officer while he is acting or purporting to act under the provisions of this article, whether such action be authorized by this article or not; further, the district shall indemnify the State of Mississippi and any sheriff for any loss, costs or expenses incurred by virtue of any act, deed or omission committed by a reservoir police officer while he is acting or purporting to act under the provisions of this article, whether the act, deed or omission is authorized by this article or not.

**SECTION 6.** Section 51-9-181, Mississippi Code of 1972, is amended as follows:

51-9-181. Each reservoir police officer commissioned under this article shall file a bond in the sum of Ten Thousand Dollars (\$10,000.00) with the district for the lawful and faithful performance of his duties. The cost of the bond shall be borne by the district. The filing of the bond shall not relieve the district from any civil liability it may otherwise incur in accordance with the provisions of Section 51-9-179. The district shall indemnify and hold the State of Mississippi, the Commissioner of Public Safety, and any sheriff harmless from any and all liability which any or all of them might otherwise incur for the negligent or unlawful acts of a reservoir police officer.

**SECTION 7.** Section 51-9-183, Mississippi Code of 1972, is amended as follows:

51-9-183. The powers and authority of any reservoir police officer, whether appointed or commissioned pursuant to the

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2814

provisions of this article or any former law of this state, may be terminated at any time by the board of directors of the district.

**SECTION 8.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2851

**Description:** Marriage license; eliminate 3-day waiting period and blood test.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* July 1, 2012

**History of Actions:**

- 1 02/20 (S) Referred To Judiciary, Division A
- 2 03/06 (S) Title Suff Do Pass
- 3 03/13 (S) Passed {Vote}
- 4 03/14 (S) Transmitted To House
- 5 03/19 (H) Referred To Judiciary A
- 6 03/28 (H) Title Suff Do Pass
- 7 04/04 (H) Passed {Vote}
- 8 04/05 (H) Motion to Reconsider Entered (Upshaw, Baker, Reynolds)
- 9 04/09 (H) Motion to Reconsider Tabled
- 10 04/09 (H) Transmitted To Senate
- 11 04/12 (S) Enrolled Bill Signed
- 12 04/12 (H) Enrolled Bill Signed
- 13 04/18 Approved by Governor

**Code Section:** A 093-0001-0005, RP 093-0001-0007

----- Additional Information -----

**Senate Committee:** Judiciary, Division A

**House Committee:** Judiciary A

**Principal Author:** Sojourner

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2851

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Sojourner

To: Judiciary, Division A

### SENATE BILL NO. 2851

AN ACT TO AMEND SECTION 93-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE THE 3-DAY WAITING PERIOD FOR A MARRIAGE LICENSE AND TO DELETE THE REQUIREMENT FOR A BLOOD TEST FOR SYPHILIS; TO REPEAL SECTION 93-1-7, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE RIGHT TO CONTEST THE ISSUANCE OF A MARRIAGE LICENSE BY ANY INTERESTED PARTY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 93-1-5, Mississippi Code of 1972, is amended as follows:

93-1-5. (1) Every male who is at least seventeen (17) years old and every female who is at least fifteen (15) years old shall be capable in law of contracting marriage. However, males and females under the age twenty-one (21) years must furnish the circuit clerk satisfactory evidence of consent to the marriage by the parents or guardians of the parties. It shall be unlawful for the circuit court clerk to issue a marriage license until the following conditions precedent have been complied with:

(a) \* \* \* Application for the license is to be made in writing to the clerk of the circuit court of any county in the State of Mississippi. The application shall be sworn to by both applicants \* \* \* and shall include:

(i) The names, ages and addresses of the parties applying;

(ii) The names and addresses of the parents of the applicants, and, for applicants under the age of twenty-one (21), if no parents, then names and addresses of the guardian or next of kin;

(iii) The signatures of witnesses; and

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2851

(iv) Any other data that may be required by law or the State Board of Health. \* \* \*

(b) Proof of age shall be presented to the circuit court clerk in the form of either a birth certificate, baptismal record, armed service discharge, armed service identification card, life insurance policy, insurance certificate, school record, driver's license, or other official document evidencing age. The document substantiating age and date of birth shall be examined by the circuit court clerk before whom application is made, and the circuit court clerk shall retain in his file with the application the document or a certified or photostatic copy of the document.

(c) Applicants under the age of twenty-one (21) must submit affidavits showing the age of both applying parties \* \* \* made by either the father, mother, guardian or next of kin of each of the contracting parties and filed with the clerk of the circuit court along with the application \* \* \*.

(d) \* \* \* If the male applicant is under seventeen (17) years of age or the female is under fifteen (15) years of age \* \* \*, and satisfactory proof is furnished to the judge of any circuit, chancery or county court that sufficient reasons exist and that the parties desire to be married to each other and that the parents or other person in loco parentis of the person or persons so under age consent to the marriage, then the judge of any such court in the county where either of the parties resides may waive the minimum age requirement and by written instrument authorize the clerk of the court to issue the marriage license to the parties if they are otherwise qualified by law. Authorization shall be a part of the confidential files of the clerk of the court, subject to inspection only by written permission of the judge.

\* \* \*



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2851

(e) In no event shall a license be issued by the circuit court clerk when it appears to the circuit court clerk that the applicants are, or either of them is: \* \* \*

(i) Intoxicated; or

(ii) Suffering from a mental illness or an intellectual disability to the extent that the clerk believes that the person does not understand the nature and consequences of the application for a marriage license.

(2) Any circuit clerk shall be liable under his official bond because of noncompliance with the provisions of this section.

(3) Any circuit court clerk who issues a marriage license without complying with the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) and not more than Five Hundred Dollars (\$500.00).

**SECTION 2.** Section 93-1-7, Mississippi Code of 1972, which provides for the right to contest the issuance of a marriage license by any interested party, is repealed.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2012.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2885

**Description:** Regional and municipal airport authorities; revise powers and duties.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Highways and Transportation
- 2 02/29 (S) Title Suff Do Pass
- 3 03/07 (S) Passed {Vote}
- 4 03/08 (S) Transmitted To House
- 5 03/14 (H) Referred To Ports, Harbors and Airports
- 6 03/29 (H) Title Suff Do Pass
- 7 04/05 (H) Passed {Vote}
- 8 04/09 (H) Transmitted To Senate
- 9 04/13 (S) Enrolled Bill Signed
- 10 04/13 (H) Enrolled Bill Signed
- 11 04/19 Approved by Governor

**Code Section:** A 061-0003-0013, A 061-0003-0015, A 061-0003-0019, A 061-0003-0079, A 061-0005-0019

----- **Additional Information** -----

**Senate Committee:** Highways and Transportation

**House Committee:** Ports, Harbors and Airports

**Principal Author:** Blount

**Additional Authors:** Hornh, Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2885

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Blount, Horhn, Jackson (11th) To: Highways and Transportation

### SENATE BILL NO. 2885

AN ACT TO AMEND SECTION 61-3-13, MISSISSIPPI CODE OF 1972, TO DESIGNATE THE POWERS AND AUTHORITY OF THE EXECUTIVE DIRECTOR OF THE AIRPORT AUTHORITY; TO AMEND SECTION 61-3-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ESTABLISHMENT OF AIRPORT AUTHORITY FIRE DEPARTMENTS; TO AUTHORIZE AIRPORT AUTHORITIES TO ENTER INTO JOINT USE OR SIMILAR AGREEMENTS WITH THE UNITED STATES OF AMERICA AND THE STATE OF MISSISSIPPI; TO AUTHORIZE AIRPORT AUTHORITIES TO ENTER INTO MUTUAL AID AGREEMENTS; TO AMEND SECTION 61-3-19, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE LEASE OF OIL, GAS AND MINERAL INTERESTS; TO AMEND SECTION 61-3-79, MISSISSIPPI CODE OF 1972, TO AUTHORIZE CERTAIN MUNICIPALITIES TO PROVIDE SERVICES ON AUTHORITY PROPERTY; TO ESTABLISH A PROCEDURE FOR AIRPORT AUTHORITIES TO ENFORCE COMMERCIAL AIRCRAFT LIENS; TO AMEND SECTION 61-5-19, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MUNICIPALITIES TO ENTER INTO JOINT USE OR SIMILAR AGREEMENTS WITH THE UNITED STATES OF AMERICA AND THE STATE OF MISSISSIPPI; TO ESTABLISH A PROCEDURE FOR MUNICIPALITIES TO ENFORCE COMMERCIAL AIRCRAFT LIENS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 61-3-13, Mississippi Code of 1972, is amended as follows:

61-3-13. (1) Each commissioner of a regional or municipal airport authority may receive from that airport authority per diem compensation in the amount provided by Section 25-3-69 for each day or fraction of a day engaged in attendance of meetings of the authority or engaged in other official duties of the authority, not to exceed one hundred twenty (120) days in any one (1) year, and may receive from the airport authority actual traveling expenses incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2885

(2) The powers of each authority shall be vested in the commissioners of that authority. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting the business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present. There shall be elected a chairman and vice chairman from among the commissioners.

(3) The commissioners of an authority shall designate an executive director, who shall be the chief executive officer of the authority and shall perform those duties as are required by law and any other duties as may be assigned by the commissioners. The commissioners may designate the executive director as the purchasing agent of the authority. If so designated, the executive director shall have the authority of the purchasing agent of a state agency under Section 31-7-13.

**SECTION 2.** Section 61-3-15, Mississippi Code of 1972, is amended as follows:

61-3-15. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes or special assessments) including, but not limited to, the power:

(a) To sue and be sued, to have a seal and to have perpetual succession.

(b) To purchase general liability insurance coverage, including errors and omissions insurance, for its officials and employees.

(c) To employ an executive director, secretary, technical experts, and such other officers, agents and employees, permanent and temporary, as it may require, and to determine their qualifications and duties, and to establish compensation and other employment benefits as may be advisable to attract and retain proficient personnel.

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(d) To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.

(e) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate and protect airports and air navigation facilities within this state and within any adjoining state, including the acquisition, lease, lease-purchase, construction, installation, equipment, maintenance and operation of such airports or buildings, equipment and other facilities or other property for the servicing of aircraft or for the comfort and accommodation of air travelers or for any other purpose deemed by the authority to be necessary to carry out its duties; to develop, operate, manage or own and maintain intermodal facilities to serve air and surface cargo and multimodal facilities to serve highway and rail passenger transportation needs to ensure interface and interaction between modes for cargo and passengers; to construct, improve, and maintain means of ingress and egress to airport properties from and over off-airport sites with approval of the city or county in which the off-airport site is located; to market, promote and advertise airport properties, goods and services; and to directly purchase and sell supplies, goods and commodities incident to the operation of its airport properties without having to make purchases thereof through the municipal governing authorities, and with the authority to utilize dual-phase design-build and construction manager at-risk methods of construction in accordance with Sections 31-7-13.1 and 31-7-13.2. For all the previously stated purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or



obstruction-lighting of airport hazards, to prevent the establishment of airport hazards or to carry out its duties.

(f) To acquire, by purchase, gift, devise, lease, lease-purchase, eminent domain proceedings or otherwise, existing airports and air navigation facilities. However, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality or public agency of this or any other state without the consent of such authority, municipality or public agency.

(g) To establish or acquire and maintain airports in, over and upon any public waters of this state, and any submerged lands under such public waters, and to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(h) To establish, enact and enforce ordinances, rules, regulations and standards for public safety, aviation safety, airport operations and the preservation of good order and peace of the authority; to prevent injury to, destruction of or interference with public or private property; to protect property, health and lives and to enhance the general welfare of the authority by restricting the movements of citizens or any group thereof on the property of the authority when there is imminent danger to the public safety because of freedom of movement thereof; to regulate the entrances to property and buildings of the authority and the way of ingress and egress to and from the same; to establish fire limits and to hire firemen, including aircraft fire and rescue and similar personnel, and to establish and equip a fire department to provide fire and other emergency services on any property of the authority; to regulate, restrain or prohibit construction failing to meet standards established by the authority; to appoint and discharge police officers with jurisdiction limited to property of the airport authority and

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authorization to enforce the ordinances, rules and regulations of the authority, as well as the laws of the State of Mississippi, and to issue citations for infractions of all of such ordinances, rules, regulations, standards and laws of the State of Mississippi returnable to the court of appropriate jurisdiction.

(i) To develop and operate an industrial park or parks and exercise all authority provided for under Chapter 7, Title 57, Mississippi Code of 1972.

(j) To attach, pursuant to the power and procedure set forth in Chapter 33, Title 11, Mississippi Code of 1972, the equipment of debtors of the authority.

(k) To enter into agreements with local governments pursuant to Section 17-13-1 et seq.

(l) To render emergency assistance to other airports within the United States at an aggregate cost of less than Twenty Thousand Dollars (\$20,000.00) per emergency. The assistance authorized in this paragraph must be rendered within ninety (90) days after a state of emergency has been declared by the federal government, or by the local or state government that has jurisdiction over the area where the airport needing assistance is located.

(m) To enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services provided at, any airport or other property of the authority on the terms and conditions as the authority may deem appropriate, including provisions limiting the liability of the United States of America or the State of Mississippi for loss or damage to the authority if the authority determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

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(n) To enter into mutual aid agreements with counties and municipalities for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted; to participate in the Statewide Mutual Aid Compact (SMAC) in accordance with Section 33-15-19.

**SECTION 3.** Section 61-3-19, Mississippi Code of 1972, is amended as follows:

61-3-19. (1) (a) Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by Section 61-3-25, an authority may, by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, real or personal, or portion thereof or interest therein, acquired pursuant to this chapter. If Section 29-1-1 is applicable to a sale of real property, the sale shall comply with Section 29-1-1.

(b) If Section 29-1-1 is not applicable, the disposal by sale, lease or otherwise, shall be in accordance with the following procedure. The authority shall find and determine by resolution duly and lawfully adopted and spread upon its minutes that:

(i) The property is no longer needed for authority purposes and is not to be used in the authority's operation;

(ii) There is no state agency, board, commission or any governing authority within the state that has expressed a need or use for the property and the federal government has not expressed a need or use for the property; and

(iii) The use of the property for the purpose for which it is to be sold, leased or otherwise disposed of will promote and foster the development and improvement of the authority or of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof.

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(2) After making the determinations, the authority may sell, lease or otherwise dispose of the property in accordance with applicable law and by any of the following methods:

(a) The authority may sell, lease or otherwise dispose of the property if the consideration is not less than the fair market price for the property as determined by averaging the appraisals of two (2) professional property appraisers selected by the authority and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the authority and the purchaser or lessee.

(b) The authority may sell, lease or otherwise dispose of the property to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to lease, sell or otherwise dispose of the property and to accept sealed competitive bids for the sale, lease or disposal of the property. The authority shall thereafter accept bids for the sale, lease or disposal of the property and shall award the sale, lease or disposal to the highest bidder.

(c) The authority may sell and dispose of personal property at public sale for cash to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the authority's intention to sell and dispose of the personal property at public sale for cash. Any public sale for cash may be conducted by or on behalf of the authority. At the public sale for cash, the personal property shall be sold and disposed of to the highest bidder.



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(d) The authority may sell and dispose of personal property by use of an Internet web service available to the public, including, but not limited to, an Internet auction website, for cash or irrevocable electronic transfer of funds, to the highest bidder after publishing at least once each week for three (3) consecutive weeks in a public newspaper published in the county in which the property is located, or if no newspaper is published in the county, then in a newspaper having general circulation therein, the following information:

- (i) The authority's intention to sell and dispose of the personal property through use of the Internet web service;
- (ii) The listing location of the personal property on the Internet website; and
- (iii) The closing date and time of the Internet sale.

At the Internet sale, the personal property shall be sold and disposed of to the highest bidder; provided, all Internet sales shall comply with federal law.

Notwithstanding anything herein to the contrary, in the case of a sale, lease or disposal of property to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease or other disposal thereof may be effected in such manner and upon such terms as the commissioners of the authority may deem to be in the best interest of civil aviation.

(3) The authority may lease lands owned by the authority for oil, gas and mineral exploration and development upon the terms and conditions and for consideration as the authority shall deem proper and advisable. However, no oil, gas or mineral lease shall be for a primary term of more than ten (10) years and the lease or leases shall provide for annual rentals of not less than One Dollar (\$1.00) per acre and shall provide for royalties of not less than three-sixteenths (3/16) of all oil, gas and other



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2885

minerals produced, including sulphur. All rentals, royalties or other revenue payable under any lease executed under this section shall be paid to and collected by the authority. The leases shall specifically provide that, in no event, shall any such lease or the exercise of any rights thereunder, interfere with the use of any airport or air navigational facilities for their intended purposes.

**SECTION 4.** Section 61-3-79, Mississippi Code of 1972, is amended as follows:

61-3-79. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created or any municipality in which any of the property of the authority is located or which is contiguous to any property of the authority may, upon such terms, with or without consideration, as it may determine:

(a) Lend or donate money to the authority;

(b) Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by, the municipality for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the municipality;

(c) Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished \* \* \* onto or in connection with such airports or air navigation facilities;

(d) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority;

(e) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from

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established streets or roads to such airports or air navigation facilities;

(f) Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

(g) Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

**SECTION 5.** Section 61-5-19, Mississippi Code of 1972, is amended as follows:

61-5-19. A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by the Municipal Airport Law.

Without limiting the foregoing, a municipality may enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services at, any airport or other property of the municipality used in connection with an airport on the terms and conditions as the municipality may deem appropriate, including provisions limiting the liability of the United States of America or the State of Mississippi to the municipality if the municipality determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

**SECTION 6.** This act shall take effect and be in force from and after its passage.

Mississippi Legislature  
2012 Regular Session

Senate Bill 2892

**Description:** Property; authorize exchange of between MS Transportation Commission and GM&O Rails to Trails Recreational District of North MS.

**Background Information:**

*Disposition:* Law

*Deadline:* General Bill/Constitutional Amendment

*Revenue:* No

*Vote type required:* Majority

*Effective date:* Passage

**History of Actions:**

- 1 02/20 (S) Referred To Public Property
- 2 02/29 (S) Title Suff Do Pass Comm Sub
- 3 03/07 (S) Committee Substitute Adopted
- 4 03/07 (S) Passed *(Vote)*
- 5 03/08 (S) Transmitted To House
- 6 03/14 (H) Referred To Public Property;Tourism
- 7 03/27 (H) DR - TSDP: PP To TO
- 8 04/02 (H) DR - TSDP: TO To PP
- 9 04/02 (H) Title Suff Do Pass
- 10 04/10 (H) Passed *(Vote)*
- 11 04/11 (H) Transmitted To Senate
- 12 04/17 (S) Enrolled Bill Signed
- 13 04/17 (H) Enrolled Bill Signed
- 14 04/23 Approved by Governor

----- Additional Information -----

*Senate Committee:* Public Property

*House Committee:* Public Property, Tourism

*Principal Author:* Simmons (13th)

*Additional Authors:* Jackson (11th)

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2892

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Senator(s) Simmons (13th), Jackson  
(11th)

To: Public Property

### COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2892

AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION AND THE GM&O RAILS TO TRAILS RECREATIONAL DISTRICT OF NORTH MISSISSIPPI TO EXCHANGE REAL PROPERTY LOCATED IN PONTOTOC COUNTY, MISSISSIPPI; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** (1) (a) In consideration for the conveyance of property authorized in subsection (2) of this section, the Mississippi Transportation Commission may transfer and convey to the GM&O Rails to Trails Recreational District of North Mississippi, all of the rights, title and interest in certain real property located in Pontotoc County, Mississippi, the property being more particularly described as follows:

Commencing at a right-of-way marker (found) at the Northwest corner of the Doris M. Seale property as recorded in Deed Book 771, Page 44 at the Pontotoc County Chancery Clerk's office in Pontotoc, Mississippi; said point being on the Eastern right-of-way line of Highway 15 and 50 feet Easterly of Station 1357+00; thence run, along said right-of-way line and the Northern Seale boundary line, North 83 degrees 34 minutes 55 seconds East of a distance of 15 feet to a point 65 feet Easterly of Station 1357+00 for a Point of Beginning; said point begin on a simple circular curve which is 65 feet East of and parallel to the centerline of Highway 15 and having the following characteristics: Chord Bearing = North 10 degrees 24 minutes 07 seconds West; Chord Length = 401.57 feet; Radius = 2933.77 feet; thence, leaving said Northern property line and

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2892

right-of-way line, run along said curve to the left in a Northerly direction for a distance of 401.89 feet to a point where said curve intersects the existing Eastern right-of-way line of Highway 15; thence run along said Eastern right-of-way line South 22 degrees 10 minutes 41 seconds East for a distance of 416.25 feet to a right-of-way marker (found) on the Northern boundary of said Seale property which is 150 feet Easterly of Station 1357+00; thence run along said Northern Seale boundary line and said existing right-of-way line, South 83 degrees 34 minutes 55 seconds West for a distance of 85.16 feet to the Point of Beginning.

Indexing Instructions: Lying and being partly in the Northeast Quarter of Section 32 and partly in the Northwest Quarter of Section 31, Township 9 South, Range 3 East, Pontotac County, Chickasaw Meridian, Mississippi, and containing 0.35 acres more or less.

(b) The State of Mississippi shall retain all mineral rights in the property and all rights to timber standing or growing on the property transferred and conveyed by mode of donation under subsection (1) of this section. The state shall have a reasonable time after the transfer and conveyance to remove said timber. If any property conveyed or transferred shall not, within ten (10) years of the date of conveyance and transfer, be used for public or economic development uses, then such property shall revert to the State of Mississippi.

(2) In consideration for the conveyance of property authorized in subsection (1) of this section, the GM&O Rails to Trails Recreational District of North Mississippi may transfer and convey to the Mississippi Transportation Commission all of the rights, title and interest in certain real property located in Pontotoc County, Mississippi, the property being more particularly described as follows:



## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2892

Commencing at a railroad spike (found) recognized as being the Southeast corner of the South Quarter of Section 30, Township 9 South, Range 3 East, Pontotoc County, Chickasaw Meridian, Mississippi; thence run North 50 degrees 54 minutes 36 seconds West for a distance of 335.36 feet to a point on the Eastern right-of-way of Highway 15 which is 32 feet Easterly of Station 102+12 for a point of Beginning; then run, along said Eastern right-of-way line, North 13 degrees 14 minutes 45 seconds West for a distance of 338.58 feet to a right-of-way marker (found) 59.33 feet Easterly of Station 105+50; thence, leaving said right-of-way line, run North 72 degrees 07 minutes 26 seconds East for a distance of 5.67 feet to a point 65 feet Easterly of Station 105+50; thence run, along a line 65 feet East of and parallel to the centerline of said Highway 15, South 17 degrees 52 minutes 34 seconds East for a distance of 907.78 feet to a point 65 feet Easterly of Station 1362+70.71; said point being the point of tangency of a simple circular curve 65 feet East of and parallel to the centerline of said Highway 15 and having the following characteristics: Chord Bearing = South 16 degrees 06 minutes 05 seconds East; Chord Length = 181.73 feet; Radius = 2933.77 feet; thence run along said curve to the right in a Southerly direction for a distance of 181.76 feet to a point where said curve intersects the existing Eastern right-of-way line of Highway 15; thence run, along said Eastern right-of-way line, North 22 degrees 10 minutes 41 seconds West for a distance of 364.90 to a point 32 feet Easterly of Station 1364+52.93; thence continue along said Eastern right-of-way line (32 feet East of and parallel to centerline) North 17 degrees 52 minutes 34 seconds West

## 2012 GENERAL LAWS OF MISSISSIPPI, SB 2892

for a distance of 388.08 feet to the Point of Beginning.

Indexing Instructions: Lying and being partly in the Southeast Quarter of Section 30 and partly in the Northwest Quarter of Section 31, Township 9 South, Range 3 East, Pontotoc County, Chickasaw Meridian, Mississippi, and containing 0.60 acres more or less.

**SECTION 2.** This act shall take effect and be in force from and after its passage.

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